Supreme Court, U.S.
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In The

Supreme Court of the United States

EVA CHARLENE SARDONELL and
DOUGLAS SARDONELL,

Petitioners,

v.

GARY NORIEGA, individually, and as a Council Member, City of Powder Springs; WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs; RICHARD SAILORS, individually, and as mayor, City of Powder Springs; VINCE BLACKMON, individually, and as Code Compliance Officer, City of Powder Springs; and the CITY OF POWDER SPRINGS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether white citizens who are discriminated against by governmental officials for renting property to black citizens, therefore have a cause of action under 42 U.S.C. § 1982?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

Introduction 2

Legal Standard Governing Review of the Record ... 3

The Facts Giving Rise to This Case 4

The District Court's Summary Judgment Order... 16

The Eleventh Circuit Proceedings 18

REASONS FOR GRANTING THE WRIT 19

The Eleventh Circuit's Decision Conflicts with *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969), and Should Be Summarily Reversed 19

CONCLUSION 27

APPENDIX

Opinion of United States Court of Appeals for the Eleventh Circuit ..... App. 1

TABLE OF CONTENTS – Continued

Page

Order of United States District Court for the Northern District of Georgia.....App. 5

Order on Petition for Rehearing and Rehearing En Banc of the United States Court of Appeals for the Eleventh Circuit .....App. 39

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Arkansas v. Sullivan, 532 U.S. 769 (2001) (*per curiam*) 26

Barrows v. Jackson, 346 U.S. 249 (1953) 19, 20

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 4

Clark County School Dist. v. Breeden, 532 U.S. 268 (2001) (*per curiam*), *rev'g*, 2000 WL 991821 (9th Cir. Jul. 19, 2000) (*per curiam*) (unpublished), judgt. order reported at 232 F.3d 893 25-26

Cutting v. Muzzey, 724 F.2d 259 (1st Cir. 1984)..... 20

Dale v. City of Chicago Heights, 672 F. Supp. 330 (N.D. Ill. 1987) 20

Des Vergnes v. Seekonk Water Dist., 601 F.2d 9 (1st Cir. 1979) 19

Graham v. Connor, 490 U.S. 386 (1989) 27 n.5

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 24 n.4

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988) 26

Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504 (2001) (*per curiam*), *rev'g*, 2000 WL 1801383 (9th Cir. Dec. 7, 2000) (*per curiam*) (unpublished), judgt. order reported at 243 F.3d 547..... 25

Monell v. Department of Soc. Services, 436 U.S. 658 (1978) 24 n.4

Ohio v. Reiner, 532 U.S. 17 (2001) (*per curiam*) 26

Pembaur v. Cincinnati, 475 U.S. 469 (1986) 24 n.4

TABLE OF AUTHORITIES – Continued

Page

Pisello v. Town of Brookhaven, 933 F. Supp. 202 (E.D.N.Y. 1996) 20, 24 n.4

Sao Paulo State of Federative Republic of Brazil v. American Tobacco Co., Inc., 122 S. Ct. 1290 (2002) (*per curiam*) 26

Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) ..... 3, *passim*

FEDERAL CONSTITUTIONAL PROVISION

U.S. Const. amend. XIV § 1 ..... 17 n.3

FEDERAL STATUTES

29 U.S.C. § 1254 1

42 U.S.C. § 1981 ..... 16, 17, 19, 20

42 U.S.C. § 1982 ..... i, *passim*

42 U.S.C. § 1983 ..... 1, *passim*

42 U.S.C. § 1985 ..... 16, 17

Fair Housing Act, 42 U.S.C. § 3604 16-17

Federal Rule of Civil Procedure 30(b)(6) 9

Federal Rule of Civil Procedure 56 3

United States Housing Act of 1937, 42 U.S.C. § 1437f ..... 5 & n.1

TABLE OF AUTHORITIES – Continued

Page

CITY ORDINANCES

City of Powder Springs, Zoning District Regulation § 7.07.02.02.05 10

City of Powder Springs, Zoning District Regulation § 7.07.02.02.08 10

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1-4) is unreported. The opinion of the district court (App. 5-38) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 18, 2001. A timely petition for rehearing and suggestion for rehearing en banc was denied on February 19, 2002. This Court's jurisdiction rests on 29 U.S.C. § 1254(1) (1999).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1982 provides in full:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit

in equity, or other proper proceeding for redress. . . .

STATEMENT OF THE CASE

Introduction

Petitioners are Douglas and Eva Charlene Sardonell ("Douglas" and "Charlene," collectively "the Sardonells"), who are husband and wife. The Sardonells are white citizens of a small town outside of Atlanta called the City of Powder Springs, Georgia (also the "City" or "Powder Springs").

Douglas and Charlene each owns a home in Powder Springs. In Douglas' home, the Sardonells live and during part of the time relevant to this case did work for Douglas' small business, A Cool Flame Heating and Air Conditioning ("A Cool Flame"). The house owned by Charlene, throughout the time relevant to this case, she has rented out to others.

In 1998, Charlene rented her house to black citizens, who thereby became the only African Americans residing on the street. As described within, this led respondent Powder Springs City Councilman Gary Noriega, who lives and whose wife's parents live on this same street, to request an official investigation of the Sardonells and of A Cool Flame. City Councilman Noriega then continued to foment the investigation and, ultimately, the respondent City of Powder Springs issued a citation to Charlene alleging a city ordinance violation. Charlene requested a jury trial, and the matter was bound over to

the State Court of Cobb County, Georgia. With the citation still unresolved, yet new criminal charges were issued, this time alleging that Charlene had parked business vehicles at Douglas' home in violation of two other ordinances. Ultimately, the *independent* Cobb County solicitor's office dropped the charges. The Sardonells brought this federal civil rights action to redress respondents' retaliatory actions against them for Charlene's renting her house to African Americans.

The district court held that the Sardonells, because they are white citizens, have no standing to assert that their civil rights under 42 U.S.C. § 1982 have been violated. The Eleventh Circuit Court of Appeals affirmed. This Court squarely held in *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969), that a white person who has been discriminated against because he has rented property to a black person has standing to maintain an action under 42 U.S.C. § 1982. Petitioners ask this Court to grant the petition and summarily reverse the Eleventh Circuit's judgment, remanding petitioners' § 1982 claim, and so much of their claim under 42 U.S.C. § 1983 as is based on their § 1982 claim, for further proceedings.

Legal Standard Governing Review of the Record

The decision below of the court of appeals affirmed a grant of summary judgment against petitioners. Therefore, the record, including "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits," Fed. R. Civ. Pro. ("F.R.Civ.P.") 56(c), must be viewed in the light most

favorable to petitioners and all reasonable inferences must be drawn in their favor. *E.g., Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

The Facts Giving Rise to This Case

Douglas and Charlene each owns a house in the City of Powder Springs, Georgia, as described in the Introduction above.

The house two doors to one side of Charlene's house is owned by Betty Jo Murphy. (Charlene's Deposition ("Depo."), at 43). When Murphy moved into the neighborhood over 28 years ago (Murphy Depo. at 8), none of the houses in the neighborhood was owned by a black person. (*Id.* at 15). Murphy explains, "they've only bought into the neighborhood in the past three or four years" (*Id.*).

Aghast over a plan of Charlene to rent her house two doors from Murphy's to an African American, Murphy remonstrated against this to Charlene on two different occasions during 1998. (Charlene's Depo. at 47-51). On the first occasion, in April 1998 in the nursing home where Murphy's parents were patients and where Charlene worked as a nurse: "Mrs. Murphy asked me if I was going to rent to blacks. She said, you're not going to rent to blacks, are you? I said, I'm going to rent to someone you know, and I told her who I was going to rent the house to," an African-American nurse at the nursing home. (*Id.* at 47). On the second occasion, in August 1998, as Charlene recounts: "she asked me again about renting to blacks and I told her I was going to rent out through

the Section 8 program.[1] She told me there was ways to avoid renting to blacks and she used another [black] gentleman's home [on the next street over] as an example for why I should not rent to blacks." (*Id.* at 48-49). Charlene would not hear of it: "I walked away. . . . I don't care to carry on conversations of that nature with people. . . . I do not want to be a party to that kind of mentality." (*Id.* at 49).

Murphy was undaunted. As Gordon Powell, who lives in the house next to Charlene's, avers in his affidavit, Murphy asked him if he knew about Charlene's intentions with regard to renting her house. (Affidavit of Gordon Powell ("G. Powell Aff.") at ¶ 9 (sworn to Dec. 26, 2000)). Murphy told Powell: She "would just have to see what '*Gary*' can do about this." (*Id.* at ¶ 10 (emphasis added)).

"Gary" is a reference to respondent Gary Noriega ("Noriega"), Murphy's son-in-law, who is married to Murphy's daughter. (Noriega Depo. at 22, 24; Murphy Depo. at 13). As mentioned above, Noriega's house is on the same street as the Sardonells' houses and Murphy's house. (*Id.* at 7).

Gary Noriega is, as mentioned above, a Powder Springs City Councilman. (Noriega Depo. at 8).

As she had planned, Charlene rented her house to the African-American nurse mentioned above, from June until August 1998 (Charlene's Depo. at 36, 47); and again,

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[1] "The Section 8 program" refers to the federal subsidized housing program under § 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f.

in September 1998, Charlene rented out her house to another person who is African American. (*Id.* at 30-31). One of the Sardonells' neighbors described the neighborhood's demographics at this time: "In 1998, the only African American family on [the street where the two Sardonell houses and Noriega's and Murphy's houses are located] lived in the house owned by Charlene." (Affidavit of John Long ("Long Aff.") ¶ 7 (sworn to Jan. 5, 2001)).

When Charlene rented her house to these black citizens – as averred by three neighbors of the Sardonells and by Douglas as well – the City of Powder Springs instituted an investigation of Charlene and Douglas and Douglas' home-based business, A Cool Flame, for the purported reason of determining if A Cool Flame was operating within the limits of its home-based business license issued by the City of Powder Springs. *See, e.g.*, Douglas' Affidavit at ¶¶ 6-7 ("Prior to my wife renting her home . . . to an African American family, I enjoyed an uneventful existence as a resident and business owner in my neighborhood. . . . Following my wife's rental of her home to an African American family . . . I began to be subjected to investigations by City of Powder Springs officials who alleged that the business activities at my home were in violation of the City's Home Occupation License ordinances."); Long Aff. ¶¶ 2, 10, 12 ("I live . . . next door to the home owned by Douglas Sardonell . . . . I observed that shortly after Charlene Sardonell rented her home to an African American family, cars marked with the City of Powder Springs emblem began surveilling [Douglas' house]."") (sworn to Jan. 5, 2001);

G. Powell Aff. ¶¶ 2, 11-14 (same) (sworn to Dec. 26, 2000); Affidavit of Sheila Powell ¶¶ 7-9 (same) (sworn to Dec. 18, 2000).

It is undisputed that this investigation was initiated upon the lone complaint of – yes, City Councilman Gary Noriega. (*See* Deposition of respondent City Manager Wayne Wright individually ("Wright indiv. Depo."), at 18 ("Q. From whom did you receive the complaints [against the Sardonells and A Cool Flame that caused you to open the investigation]? A. I believe Councilman Noriega called me. Q. Other than Councilman Noriega, who else did you receive complaints from? A. I don't recall any others.")); *id.* at 20-21 ("Q. Did you receive any other complaints regarding the Sardonells or any of their business activities, other than Mr. Noriega's complaint? A. Mr. Noriega contacted me several times about the situation. Are you talking about from other individuals? Q. Yes. A. No, not that I recall."); Deposition of Lieutenant James E. Freeland at 62-63 ("Q. Do you know of any complaints that have come to the police department [about the Sardonells]? A. Not that I'm aware of.")).

Specifically, it is undisputed that City Councilman Noriega telephoned respondent City Manager Wayne Wright, who reports to the City Council (Wright indiv. Depo. at 16), and Noriega told Wright that "he [Noriega] had been getting complaints from neighbors" about business activities at Douglas' house. (Wright indiv. Depo. at 20; *see* Noriega Depo. at 38 ("I called Mr. Wright, our City manager. I said, 'Wayne, I have received a complaint.' "). When Noriega was asked at his deposition to identify who complained to him against A Cool Flame and the Sardonells, he could cite only the following:

> [M]y wife told me that her mother [Ms. Murphy above] had told her that Mary Sitherwood [a neighbor of Ms. Murphy] had told her that she was tired of the vans being up in the Sardonells' yards and whatever. . . . Ms. Sitherwood had told Ms. Murphy – because they're big buddies – had told Ms. Murphy would she let Gary know that there's a lot of activity going on up at the Sardonells because I can't see their house from where I live. I can't see it front or back. So I don't know what's going on up there.

Noriega Depo. 37-38; *id.* at 51-52 ("Q. . . . Other than the initial complaint that you received by way of your wife, were there any other complaints that you received about activities at the Sardonells' home? A. The Sardonells? No."); *id.* at 61).

Noriega's allegation that he requested Wright to investigate based on this purported "complaint" lacks any credibility – or certainly a reasonable factfinder could so conclude. First, according to Noriega's own testimony, Mary Sitherwood herself admitted in the "complaint": "I can't see [the Sardonells'] house from where I live. I can't see it front or back. So I don't know what's going on up there." (*Id.*) Moreover, as alleged by Noriega, the "complaint" is third-hand – via his wife, via her mother. (*Id.*) Noriega concedes he never spoke personally with Ms. Sitherwood about the purported "complaint." (*Id.* at 47).

And most importantly, in their own depositions, *Mary Sitherwood and Murphy – both – deny that the alleged "complaint" ever was made.* (Deposition of Murphy at 41 ("Q. You've heard of no complaints by neighbors regarding activities at the Sardonells' home, correct? A. Correct."); Deposition of Mary Sitherwood at 25 ("Did you

ever tell Mrs. Murphy that you needed to have anything done about anything going on at Douglas Sardonells' home regarding activities? A. No."; "Q. Did you ever imply to Mrs. Murphy that you needed or wanted to have anything done about activities going on at Douglas Sardonell's home? A. No.")).

As unfounded as was Noriega's complaint to Wright, so did Noriega foment the investigation with even greater zeal. It is undisputed that after Charlene rented her house to African Americans, Noriega "several times" raised the subject of alleged business activities at the Sardonells' home with City Manager Wright and "at different work sessions of the city council." (Wright indiv. Depo. at 21 ("Mr. Noriega contacted me several times about the situation."); Deposition of Wayne Wright pursuant to F.R.Civ.P. 30(b)(6) ("Wright 30(b)(6) Depo.") at 62 ("I recall Mr. Noriega raising the issue that the violations had continued or were ongoing at different work sessions of the city council."); *see also* Wright indiv. Depo. at 22 ("Q: And then you remember a planning meeting with the city council, in which Mr. Noriega complained about the Sardonells; is that correct? A: Yes.")).

On January 25, 1999, respondent City Code Compliance Officer Vince Blackmon sent a letter to the Sardonells alleging, "[t]here have been *continuous complaints* to the City concerning business vehicles parked on your premises; also, numerous deliveries."[2] However, the City officials' admissions and the other testimony above bring

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[2] (Letter dated Jan. 25, 1999 from Vince Blackmon to Douglas Sardonell (Exh. D-5 to D. Sardonell Depo.) (emphasis added))

to light that the complaints against the Sardonells originated only with City Councilman Noriega. *See* pp. 6-9 *supra*. It is undisputed that the Sardonells could have one business vehicle and receive four or fewer deliveries a month at Douglas' house, pursuant to Douglas' business license. City of Powder Springs, Zoning District Regulations § 7.07.02.02.05 (one business vehicle permitted); § 7.07.02.02.08 (four or fewer deliveries a month permitted); (Plaintiffs' Exhibit Wright # 3 to Wright indiv. Depo.). Although on some occasions a second vehicle for business purposes had been parked at Douglas' home, from well before Charlene rented her home to black citizens, the affidavits of the Sardonells' neighbors above, and the respondents' admissions, give rise to a reasonable inference that respondents were willing to allow this so long as Charlene's house was not being rented to black citizens. *See* pp. 6-9 *supra*. The Sardonells' neighbors have never complained about a second business vehicle being parked on some occasions at the Sardonells' home. They aver seeing only one business vehicle there on a regular basis. (Long Aff. ¶ 9 ("It is my personal observation that in 1998 and 1999 only one van marked as a business vehicle was parked at the home of Douglas Sardonell on a regular basis."); G. Powell Aff. ¶ 5 ("I saw in 1999, on a regular basis, only one van marked with Douglas Sardonell's business logo and parked at this location.")). The neighbors further aver that there was no significant loading and unloading of materials at the Sardonells' home. (Long Aff. ¶ 5 ("During the period between 1998 and 1999, I did not observe any significant loading of any materials at [Douglas' home]."); G. Powell Aff. ¶ 5 ("[B]etween 1995 and 1999, I observed no significant or ongoing loading or unloading of materials at [Douglas' house]")).

In order to bring a stop to the surveillance and the unfounded accusations, the Sardonells requested a land use permit for Douglas' home, to put the matter to rest. This brought Douglas and Charlene before the City Council on March 1, 1999, and neighbors of the Sardonells attended the City Council meeting in their support. (Transcript of March 1, 1999 City Council Meeting pp. 1-2 (Exh. A to [First] Affidavit of Betty Brady, City Clerk, City of Powder Springs (sworn to Dec. 8, 2000)); and Noriega Depo. at 75). In the meantime, a commercial location from which he could conduct the business of A Cool Flame in Powder Springs was identified by Douglas, and at the March 1, 1999 City Council meeting, Douglas and Charlene explained to the City Council:

> [Charlene:] We have located and will be moving into a commercial place April first. . . . [W]e really don't need to be getting letters and phone calls for the next thirty days. . . . [Douglas:] [W]e want the harassment stopped because we have been harassed. . . . [W]e need to have them stop bothering us because we don't bother anybody.

(Transcript of March 1, 1999 City Council Meeting, p. 1). When Charlene further informed the City Council at its meeting on April 5, 1999 that Douglas' business had moved as of April 1, 1999, the matter was closed. (Transcript of April 5, 1999 City Council Meeting, pp. 1-4 (Exh. A to [Second] Affidavit of Betty Brady (sworn to Dec. 8, 2000))).

Or so the Sardonells thought.

During the week of April 12, 1999, City Councilman Noriega again called City Manager Wright about the Sardonells (Wright indiv. Depo. at 39-40), and at the City Council's work session on Wednesday, April 14, City

Councilman Noriega introduced the issue of taking some action against the Sardonells. (Wright indiv. Depo. at 81 ("I remember at the work session, when Mr. Noriega raised the issue [of "tak[ing] action against the Sardonells"] the week the citation was issued."); *see id.* at 25-28).

City Manager Wright then immediately surveilled the Sardonells' home. (See text immediately below). Wright had personally surveilled the Sardonells' home many times before this, but he concedes he does not remember seeing any violations of city ordinances on these prior occasions. (G. Powell Aff. ¶ 12 ("I observed Wayne Wright often driving a City of Powder Springs vehicle and surveilling the Sardonell home in late 1998 and 1999, including many weekends."); Wright indiv. Depo. at 74 ("A. . . . I went by [Douglas' house] prior to the land use permit hearing [March 1, 1999] . . . [a]nd I may have been by earlier as well. Q: Do you recall what you observed when you went by, other than in April of '99. A: I don't remember seeing any – well – I don't remember. I don't remember seeing any violations. . . . Q: You don't remember any violations? A: No. . . . ")).

Wright contends, however, that when he surveilled the Sardonells' home for "a few minutes," *after* the phone call from Noriega and the City Council work session on April 14, 1999, he as well as two of his employees saw several business vehicles and other activities on Douglas' property. (Wright 30(b)(6) Depo. at 22-24, 48; Wright indiv. Depo. at 39-41)).

Based on this alleged observation, on April 16, 1999 the City of Powder Springs Police Department issued a citation at Douglas' home to Charlene alleging that she

had operated a business without a license. (Wright indiv. Depo. at 76). It is undisputed that the citation was issued upon the personal request of City Manager Wright. Specifically, Wright telephoned the City of Powder Springs Chief of Police, who reports to Wright, and "asked the chief of police to issue a citation." (Wright indiv. Depo. at 109). Wright admitted at his deposition that he has never before or since personally requested that the Chief of Police issue a citation against anyone. (*Id.* at 112) ("Q: The question is: Can you tell me that you have ever, other than with the Sardonells, requested directly – you, yourself – that the chief of police have a citation issued to a citizen for a violation of a city ordinance? A: And I think I've clearly answered that question. Q: Answer the question "yes" or "no," please, sir. A: No.").

The Chief of Police in turn directed Lieutenant James Freeland to issue the citation. (Freeland Depo. at 46-47). As Lieutenant Freeland explained in his deposition, he had patrolled the Sardonells' street once a week during 1999 and, based on those patrols, he "had no reason to be concerned about any illegal activities at [Douglas' house]." (*Id.* at 35-37). Lieutenant Freeland responded to the Chief's instruction to issue the citation: " 'Well, I don't know what this is,' and the chief reminded me – well, basically what it comes down to is a police officer has to obey any lawful order given to him by a superior, okay? . . . I was to go cite the Sardonell residence. . . . So that's what I did." (*Id.* at 46-47).

When Charlene requested a jury trial of the charge, the case against her was bound over to State Court of Cobb County, Georgia (from Powder Springs Recorder's Court). (*E.g.*, Wright 30(b)(6) Depo. at 58). Charlene then

endured months with the charge left hanging over her head until – more than one year after the original citation had been issued and was still not resolved – new charges issued against Charlene. This time the charges were that Charlene had parked business vehicles on the premises of Douglas' house. (Waiver of Formal Arraignment and Notice of Return, State Court of Cobb County, Case # OOM2078 (April 19, 2000)). These criminal charges against Charlene carried penalties of "up to 12 months incarceration and/or a $1,000 fine or any combination of the two." *Id.* And Charlene had to endure having these charges hanging over her for yet another four months, *until the independent Cobb County solicitor's office dropped the charges. See* Entry of Nolle Prosequi, Aug. 14, 2000, State Court of Cobb County, Cobb Judicial Circuit (Glover, J.).

The City of Powder Springs would give the Sardonells no rest – none. Immediately upon Douglas' moving A Cool Flame to a business location on April 1, 1999, new obstacles were erected there by the City to Douglas' lawful use and enjoyment of the commercial property in Powder Springs. Specifically, as the commercial landlord avers in his affidavit:

> After Douglas Sardonell leased the rental location, I was told by a City of Powder Springs official . . . that I would have to obtain a Certificate of Occupancy, including a Fire Marshall Certificate, if I wanted to continue to lease the rental location to Douglas Sardonell. Prior to my leasing the rental location to Douglas Sardonell, I had never been requested to obtain such a Certificate of Occupancy or Fire Marshall Certificate for any tenant.

McTyre Aff. at ¶¶ 3-4.

After "just a little over a month" at this new location, Douglas determined it was best to move A Cool Flame out of Powder Springs altogether, to Smyrna, Georgia. (Douglas' Depo. at 20). The harassment by respondents had become too great. Sadly, the resulting need to move Douglas' business during the onset of the spring/summer air conditioning season in Georgia limited the business' growth. (*Id.* at 77). Even so, the surveillance activities by the City of Powder Springs continued for months after A Cool Flame was moved out of Powder Springs, as the Sardonells' neighbors confirm. (*See* Long Aff. ¶ 11 ("I continue to see cars marked with the City of Powder Springs emblem, which continue to survey the home of Douglas Sardonell.") (sworn to Jan. 5, 2001); G. Powell Aff. ¶ 14 ("I, as of this day, continue to observe City of Powder Springs vehicles driving by and surveilling the Sardonell home on a weekly basis.") (sworn to Dec. 26, 2000); S. Powell Aff. ¶ 8 ("I have observed that surveillance of Douglas Sardonell's home continues on a regular basis, and that surveillance of this home is being done by individuals driving City of Powder Springs vehicles.") (sworn to Dec. 18, 2000); *see also* D. Sardonell Aff. ¶ 26 ("[S]urveillance of my home continues to this day, despite the fact that my business operations were moved out of the City of Powder Springs in May of 1999.") (sworn to Jan. 8, 2001)).

One further, sad piece of evidence attesting to a racial basis for City code compliance actions in Powder Springs is provided by an African-American gentleman who lives in the same subdivision as the Sardonells, Edward Harper. Mr. Harper explains:

> ¶ 4. I [have been] issued two (2) letter warnings by Code Compliance Officer Vince Blackmon for having grass that was too tall.
>
> ¶ 5. In my observation, there was no difference in the height of my grass and other neighbors who were of the Caucasian race who lived on my block.
>
> ¶ 6. To the best of my knowledge, none of my Caucasian neighbors were ever given warnings by City officials for having grass that was too tall.

Affidavit of Edward Harper ¶¶ 4-6 (sworn to Jan. 8, 2001).

The record amply permits a reasonable factfinder to conclude that City Councilman Gary Noriega, City Manager Wayne Wright and City Code Compliance Officer Vince Blackmon engaged in a pattern of racially motivated discrimination against Douglas and Charlene Sardonell by means of frequent surveillance, unfounded accusations, and criminal charges that were later dropped by an independent prosecuting authority, all for the purpose of punishing Charlene's having exercised her right to lease her home to black citizens.

The District Court's Summary Judgment Order

Petitioners instituted this federal civil rights action in the federal district court for the Northern District of Georgia, Atlanta Division, alleging that the respondents' actions violated the federal civil rights statutes, 42 U.S.C. §§ 1981, 1982, 1983 and 1985, and the Fair Housing Act,

42 U.S.C. § 3604.[3] Named as defendants were respondents City Councilman Noriega, City Manager Wright, and City Code Compliance Officer Vince Blackmon, in their official capacities and individually; the City of Powder Springs; and others.

After other pre-trial proceedings, the district court (Carnes, J.) entered summary judgment for respondents on all counts. A single theme unified the district court's reasoning in rejecting every one of petitioners' claims under the federal civil rights statutes above: *a supposed lack of standing* for petitioners Douglas and Charlene – as white citizens – to avail themselves of the fundamental protections afforded by the federal civil rights statutes even though they had alleged discrimination against them because Charlene rented her house to black citizens. App. 30-31 ("Plaintiffs . . . appear to be alleging that they were discriminated against . . . because they entered into a contract with a black person. Plaintiffs have not cited any case law allowing this sort of 'association' claim under § 1981."); App. 31-32 ("[P]laintiffs' situation would not appear to fit within the scope of a § 1982 claim. In a typical § 1982 claim, a plaintiff must show . . . that he is a member of a racial minority . . . "); App. 33-34 ("§ 1985(3) . . . was intended to encompass only those conspiracies motivated by animus against the kind of classes Congress was trying to protect. . . . Plaintiffs have not alleged that they were a member of a class discriminated against. . . . Accordingly, plaintiffs' section 1985 claim fails as well."); App. 22-23 ("[I]t would seem that

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[3] Petitioners further alleged violations of the Fourteenth Amendment's Due Process and Equal Protection Clauses. U.S. Const. amend. XIV § 1.

plaintiffs lack any standing to bring a FHA claim [sic]. . . . Plaintiffs . . . have failed to provide one cite to a case in which this sort of claim was cognizable under the FHA.").

Moreover, in rejecting petitioners' § 1982 claim in particular, the district court relied solely on the supposed lack-of-standing rationale described and quoted above. (App. 31-32).

The Eleventh Circuit Proceedings

In a brief order, the Eleventh Circuit affirmed. The Eleventh Circuit approved, without significant analysis, the district court's decision as "a carefully drawn order of 37 pages." App. 2. The Eleventh Circuit mentioned only in passing petitioners' claims under the federal civil rights statutes, including § 1982. App. 2-4.

In particular, even though petitioners devoted over three pages of their opening brief in the court of appeals to the critical point that they, as white citizens, nevertheless had standing to sue under the federal civil rights statutes (*see* Brief of Appellants at 29-32), the Eleventh Circuit let stand without even a comment the district court's conclusion that petitioners, as white citizens, were without standing to obtain redress for discrimination against them because Charlene rented her home to black citizens. The Eleventh Circuit failed to address or correct the district court's reasoning, in particular, as to petitioners' claim under 42 U.S.C. § 1982, even though no alternative reason had been given by the district court as to why petitioners' § 1982 claim should not be allowed to proceed to trial.

A timely petition for rehearing and rehearing en banc was denied without comment.

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit's Decision Conflicts with *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969) and Should Be Summarily Reversed.

In *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969), this Court held that "there can be no question but that" a white citizen who has been discriminated against because he has rented property to a black citizen "has standing to maintain [an] action" under 42 U.S.C. § 1982. *See* 396 U.S. at 237 (citing *Barrows v. Jackson*, 346 U.S. 249, 259 (1953)). The discriminatioin against the white lessor in *Sullivan* took the form of expulsion from a local recreational facility. *Id.* at 235-36. The Court reasoned that it was imperative, in order to achieve the purposes of § 1982, for the white lessor to have standing under the statute:

> If [a] sanction, backed by a state court judgment, can be imposed, then Sullivan is punished for trying to vindicate the rights of minorities protected by § 1982. Such a sanction would give impetus to the perpetuation of racial restrictions on property. That is why we said in *Barrows v. Jackson*, 346 U.S. 249, 259 . . . that the white owner is at times 'the only effective adversary' of the unlawful restrictive covenant.

396 U.S. at 229; *see Des Vergnes v. Seekonk Water Dist.*, 601 F.2d 9, 14 (1st Cir. 1979) ("[T]o invoke § 1981 or § 1982 one need not be a member of the racial class protected by

the statute.") (citing *Sullivan*); *Cutting v. Muzzey*, 724 F.2d 259, 259-61 (1st Cir. 1984) ("[T]he district court erred in dismissing [this federal civil rights] action for lack of standing" where the plaintiff housing developer alleged that the defendant town planning board's imposition of "outrageous conditions" on the developer's subdivision construction project, "was motivated by racial animus towards the plaintiff's purchasers, all of whom had Italian surnames."); *Dale v. City of Chicago Heights*, 672 F. Supp. 330, 331 (N.D. Ill. 1987) ("In Counts I and II, plaintiffs, a white couple, allege that defendants violated 42 U.S.C. §§ 1981 and 1982 through a pattern of conduct designed to punish the plaintiffs for, and interfere with, the rental of their property to black tenants. . . . Counts I and II do set forth claims upon which relief may be granted.") (citing *Sullivan* and *Barrows*); *Pisello v. Town of Brookhaven*, 933 F. Supp. 202, 215-16 (E.D.N.Y. 1996) (Plaintiff developer "alleges that he was subject to ongoing harassment by the defendants as a result of his providing housing to low income minorities. . . . [T]hese allegations fall under the penumbra of section 1981 cases in which the non-minority plaintiff is retaliated against as a result of his failure to discriminate in the contractual context.") (collecting authorities).

Sullivan applies with even greater force here. The respondents – City Councilman Noriega, City Manager Wright, City Code Compliance Officer Blackmon, and the City proper – wield governmental power, not mere private social power as did the private recreational facility in *Sullivan*. The respondents issued a citation and pressed criminal charges against Charlene, carrying the possibility of one (1) year in prison and/or a $1000 fine each.

After making Charlene endure a delay of months awaiting resolution of the charges, finally the charges were dropped by the *independent* Cobb County solicitor's office. *See* p. 14 *supra*. If the discriminatory harassment inflicted on petitioners by these respondents goes unredressed, respondents will be confirmed of their ability to escape the federal civil rights statutes in the future, and petitioners or other property owners in respondents' jurisdiction will be deterred – or further deterred – from renting their homes to anyone except whites. Members of minority groups who would have otherwise considered moving into respondents' jurisdiction will be hampered or deterred from doing so because of discrimination against them by would-be landlords. As petitioners argued in the court of appeals, moreover: "[T]he potential class of litigants challenging such unlawful conduct would be limited to those who are very often the most intimidated, and who possess the least opportunity to challenge such violations of the law: a result the drafters of these federal laws surely did not intend." Brief of the Appellants [in the Eleventh Circuit] at 31. The purposes sought to be served by the federal civil rights statutes relating to nondiscrimination in the transfer of property will have been utterly thwarted in the City of Powder Springs, Georgia.

As described above, the only reason given by the district court for rejecting petitioners' § 1982 claim – that whites lack standing to sue under § 1982 for discrimination against them because they rented to blacks – is absolutely wrong under this Court's established precedent. *See Sullivan, supra*. Yet the Eleventh Circuit necessarily approved this major tenet of the district court's

"reasoning" – it being *the* central premise of what the Eleventh Circuit heralded as the district court's "carefully drawn order of 37 pages." App. 2; *see* pp. 17-18 *supra*. The Eleventh Circuit never addressed petitioners' § 1982 claim as distinct from several of petitioners' other claims. The court of appeals stated in the final two sentences of its order: "We have reviewed the other counts and specific allegations. The record does not support a finding that the district court committed reversible error." App. 4. First, this begs the question – what did the court of appeals understand the law to be, in the light of which it reviewed the record? Certainly, if the Eleventh Circuit accepted the district court's central legal conclusion – as the Eleventh Circuit's order affirming the decision dictates that it did (applauding the "district court's carefully drawn order of 37 pages") – the Eleventh Circuit's conclusion that the record somehow does not support a § 1982 claim is utterly without merit. As described above, the record more than permits a reasonable factfinder to infer that the respondents have engaged in racially motivated punishment of the Sardonells because of Charlene's exercise of her right to rent her house to black citizens.

Second, it is evident from the the Eleventh Circuit's order that the court's review of the record was not careful or conducted in the light most favorable to the Sardonells. Specifically, the order is inaccurate and misleading in stating that the Sardonells attended "numerous city council meetings . . . [but] never mentioned . . . any retaliatory measures being taken against them by the City." App. 4. First, the record plainly shows that the criminal charges against Charlene – the most egregious retaliatory actions – were filed *after* the two City Council meetings. *Compare*

p. 11 *supra* (the City Council meetings were on March 1, 1999 and April 5, 1999) *with* pp. 12-14 *supra* (citation issued April 16, 1999; other charges issued April 19, 2000). Second, the transcripts of the City Council meetings show plainly that, at the March 1, 1999 City Council meeting, the Sardonells vigorously objected to many of the City's retaliatory actions as of that date. *See* p. 11 *supra* (quoting Douglas and Charlene). Charlene attended the April 5, 1999 City Council meeting alone, in order to confirm to the City Council that Douglas' business had moved on April 1, 1999, as previously discussed with the City Council on March 1, 1999, in order to bring an end to the City's harassment, which end sadly was not forthcoming.

Had the City of Powder Springs imposed a formal tax on rentals of property to black citizens, the tax law or any enforcement thereof would clearly violate § 1982, and could successfully be challenged in an action brought by a white landlord under *Sullivan* above. The harassment of petitioners here by respondents is every bit as powerful as a formal "tax" – perhaps more so because it is more clandestine – in deterring and penalizing property rentals to black citizens. "The right to 'lease' is protected by § 1982 against the actions of third parties," 396 U.S. at 237, such as respondents here. The district court should have permitted the Sardonells to proceed to trial on their § 1982 claim; certainly summary judgment should not have been granted and affirmed on the basis of the fundamental misconception that § 1982 does not permit a white person to sue.[4]

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[4] The district court – in language nowhere adverted to by the Eleventh Circuit – suggested that the individual

The more things have changed, the more they have stayed the same. The State of Georgia was in times past a

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respondents (defendants in the district court) were entitled to "qualified immunity" because they were not acting contrary to clearly established law. App. 29 n.13. However, as *Sullivan* shows, the law is clearly established against respondents' wrongful actions and, therefore, respondents have no entitlement to qualified immunity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *see also Pisello*, 933 F. Supp. at 219 ("[T]he individual defendants are not entitled to qualified immunity. The Amended Complaint alleges that the individual defendants conspired to run [plaintiff developer] out of business because he places low income minority families in their community. In the Court's view, these allegations lay at the heart of this federal civil rights case. As stated above, the fact that the plaintiff is white does not alter this conclusion.").

The district court further suggested that respondent Noriega was entitled to "legislative immunity" to the extent he was "ruling on zoning and land issues." App. 29 n.13. However, as detailed above, none of Noriega's conduct insofar as relevant to petitioners' § 1982 claim involves any "ruling on zoning and land use issues." *See* pp. 5-15 *supra*. Accordingly, legislative immunity lends Noriega no relief.

Lastly, the district court suggested that petitioners could not establish municipal liability against respondent City of Powder Springs under *Monell v. Department of Soc. Services*, 436 U.S. 658, 690 (1978). App. 29 n.13. This suggestion lacks any merit as well. Petitioners more than satisfy the *Monell* criteria. Under *Monell*, "it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." 436 U.S. 658, at 694. In light of the record above, the actions and directives of City Councilman Noriega, City Manager Wright, and City Code Compliance Officer Blackmon against petitioners "may fairly be said to represent official policy." *Id.*; *see also Pembaur v. Cincinnati*, 475 U.S. 469, 480-81 (1986) ("[W]here action is directed by those who establish

bastion of the Confederacy with all for which it stood. During the Reconstruction era and until near modern times, segregation and discrimination prevailed. Today, one might have hoped that a case like this would not arise. It has. The breadth of protection afforded by Congress in § 1982 to citizens victimized by racial discrimination in leasing property – white or black – has been rendered nugatory by the district judge's crabbed surmise as to the scope of the federal civil rights statutes, and three judges of the United States Court of Appeals for the Eleventh Circuit have failed to find this fundamental, pervasive error in the district court's opinion worthy of reversal or mention.

Where a court of appeals' decision conflicts with the established law of this Court, this Court will grant the writ of certiorari and summarily reverse the lower court's decision, even where the lower court's decision is unpublished. *See, e.g., Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 505 (2001) (*per curiam*) ("Because the Court's determination conflicts with our cases . . . we grant the petition for a writ of certiorari and reverse."), *reversing*, 2000 WL 1801383 (9th Cir. Dec. 7, 2000) (*per curiam*) (unpublished), judgt. order reported at 243 F.3d 547; *Clark County School Dist. v. Breeden*, 532 U.S. 268, 270 (2001) (*per curiam*) (where court of appeals' ruling was contrary to "what was plain from our previous decisions," petition for certiorari granted and court of

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governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly. To deny compensation to the victim would therefore be contrary to the fundamental purpose of § 1983.").

appeals' judgment reversed), *reversing*, 2000 WL 991821 (9th Cir. July 19, 2000) (*per curiam*) (unpublished), judgt. order reported at 232 F.3d 893; *see also Sao Paulo State of Federative Republic of Brazil v. American Tobacco Co., Inc.*, 122 S. Ct. 1290, 1292 (2002) (*per curiam*) ("[T]his case is easily disposed of. . . . The Fifth Circuit's decision is inconsistent with *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 . . . (1988). . . . Accordingly, we grant the petition for certiorari, reverse the judgment of the Court of Appeals, and remand the case for proceedings consistent with this opinion."); *Arkansas v. Sullivan*, 532 U.S. 769, 771 (2001) (*per curiam*) ("Because the Arkansas Supreme Court's decision on rehearing is flatly contrary to this Court's controlling precedent, we grant the State's petition for a writ of certiorari and reverse."); *Ohio v. Reiner*, 532 U.S. 17, 21 (2001) (*per curiam*) ("The Supreme Court of Ohio's determination that [the defendant] did not have a valid Fifth Amendment privilege . . . clearly conflicts with [our cases]. . . . [T]he petition for a writ of certiorari is granted, the court's judgment is reversed, and this case is remanded for further proceedings not inconsistent with this opinion.").

For the sake of petitioners Douglas and Charlene Sardonell, of citizens who reside or who would choose to reside in Powder Springs if housing were available to them on a non-discriminatory basis, and of other plaintiffs who may encounter the same federal courts in future civil rights matters, this Court should grant the petition, summarily reverse the judgment of the Eleventh Circuit to the extent that it affirms the entry of summary judgment on petitioners' § 1982 claim (and petitioner's § 1983

claim insofar as it is premised on their § 1982 claim[5]) and remand the case for further proceedings.

CONCLUSION

This Court should grant the petition, summarily reverse in part the Eleventh Circuit's judgment as to petitioners' § 1982 claim and its § 1983 claim insofar as premised on the § 1982 claim, and remand the case for further proceedings.

Respectfully submitted,

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[5] Section 1983 of course does not provide a substantive right of itself, but rather "provides a method for vindicating federal rights elsewhere conferred" such as in § 1982. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989).

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-12824
Non-Argument Calendar

D.C. Docket No. 99-01921-CV-JEC-1

EVA CHARLENE SARDONELL,
DOUGLAS SARDONELL,

Plaintiffs-Appellants,

versus

GARY NORIEGA, individually and
as Council Member, City of Powder Springs,
WAYNE WRIGHT, individually and as City
Manager, City of Powder Springs,
RICHARD SAILORS, individually and as
Mayor, City of Powder Springs,
VINCE BLACKMON, individually and as
Code Compliance Officer,
CITY OF POWDER SPRINGS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(Filed December 18, 2001)

Before CARNES, HULL and GODBOLD, Circuit Judges.

PER CURIAM:

Plaintiffs are landlords and business owners in the City of Powder Springs, Georgia. They have filed this action against The City of Powder Springs, Georgia; Gary Noriega, individually and as Council Member; Wayne Wright, individually and as City Manager; Richard Sailors, individually and as Mayor; Vince Blackmon, individually and as Code Compliance Officer.

Plaintiffs allege in count I that Defendants were guilty of acting in concert and under color of state law to conspire to deny Plaintiffs the right to rent their residence to individuals without regard to race in violation of 42 U.S.C. § 3604. Count II alleges Defendants' conduct is actionable under 42 U.S.C. § 1983 as a violation of Plaintiffs' right to equal protection and substantive due process and their right not to be deprived of property rights without procedural due process of law. Count III alleges that Defendants' conduct is actionable under 42 U.S.C. § 1981 as a violation of Plaintiff's right to equal protection under the laws and their right to make and enforce contracts without regard to race. Count IV alleges that Defendant's conduct is actionable under 42 U.S.C. § 1982 as a violation of Plaintiff's right to equal protection under the laws and their right to buy, sell, or lease property without regard to race. Count V alleges Defendants conspired to deprive Plaintiffs of their constitutional rights to equal protection and due process of law in violation of 42 U.S.C. § 1985.

Defendants moved for summary judgement. The court considered the arguments. It entered a carefully drawn order of 37 pages granting Defendants' motion.

The basis of the order is that there was no connection between the alleged acts and a violation of the Fair Housing Act, or 42 U.S.C. §§ 1981, 1982, 1983 and 1985. Plaintiffs appeal. We affirm.

In Defendants' motion for summary judgment they argued that Plaintiffs failed to state a cognizable claim under the Fair Housing Act. The district court agreed. On appeal Plaintiffs say that they identified specific portions of the Fair Housing Act and then stated facts which supported their claim. Therefore they have stated a cognizable claim under the Fair Housing Act. They are wrong.

In their brief Plaintiffs cite to their Memorandum and Opposition to Defendants' Motion for Summary Judgment for the proposition that they cited the relevant Fair Housing Act provisions. In their memorandum Plaintiffs cite 42 U.S.C. § 3604(2), (3), and (5). However, these subsections do not exist. After carefully comparing the Plaintiffs' memorandum and brief to the Fair Housing Act the court concluded that the appropriate cites were 42 U.S.C. § 3604(a), (c), and (e).[1]

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[1] 42 U.S.C. § 3604 states in its relevant part: "it shall be unlawful – (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race . . . (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race . . . (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race."

Plaintiffs then attempt to support the above allegations with evidence that the City of Powder Springs retaliated against them for renting to non-whites. One of the alleged retaliations was that the City sent Plaintiffs a letter stating that they were in violation of the City's home occupation business license. During numerous city council meetings regarding the home occupation business license Plaintiffs never mentioned the Fair Housing Act or any retaliatory measures being taken against them by the City.

In the district court Plaintiffs alleged other retaliatory acts. However they did not cite in the district court or in this Court any case law or other relevant authority that the type of alleged retaliation they assert is cognizable under the Fair Housing Act. We cannot say that the district court erred in granting Defendants' summary judgment motion regarding the Fair Housing Act.

Plaintiffs allege that the district court erred in failing to allow them to file an amended complaint and a second amended complaint. They also assert that the district court erred in deciding not to strike portions of Defendants' Brief in Support of the Motion for Summary Judgment. Specifically Plaintiffs argue that the brief was replete with citations that were not in appropriate form because they contained the incorrect court, date and case reporter or this information was missing. These arguments are without merit.

We have reviewed the other counts and specific allegations. The record does not support a finding that the district court committed reversible error.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL,	)	CIVIL ACTION NO.
Plainitffs,	)	1:99-CV-1921A-JEC
v.	)	
GARY NORIEGA, individually and as a Council Member, City of Power Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually, and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, City of Powder Springs, and the CITY OF POWDER SPRINGS,	)	
Defendants.	)	

ORDER

(Filed April 19, 2001)

This case is presently before the Court on plaintiffs' Motion for Leave to File a Second Amendment to Complaint [48], defendants' Motion for Summary Judgment [50], plaintiffs' Motion to Strike Portions of Defendants' Brief [60], plaintiffs' Motion for Hearing on Defendants' Motion for Summary Judgment [61], plaintiffs' Motion for

Leave of Court to File Excess Page Limitation [65], and plaintiffs' Motion to Continue Consideration of Defendants' Motion for Summary Judgment [66]. The Court has reviewed the record and the arguments of the parties and, for the reasons set out below, concludes that plaintiffs' Motion for Leave to File a Second Amendment to Complaint [48] should be **DENIED**, defendants' Motion for Summary Judgment [50] should be **GRANTED**, plaintiffs' Motion to Strike Portions of Defendants' Brief [60] should be **DENIED**, plaintiffs' Motion for Hearing on Defendants' Motion for Summary Judgment [61] should be **DENIED**, plaintiffs' Motion for Leave of Court to File Excess Page Limitation [65] should be **GRANTED**, and plaintiffs' Motion to Continue Consideration of Defendants' Motion for Summary Judgment [66] should be **DENIED AS MOOT**.

BACKGROUND

Plaintiffs Charlene and Douglas Sardonell are husband and wife. (compl. [1] at ¶ 2.) They are white citizens of Cobb County, Georgia, residing in Powder Springs, Georgia. (Defs.' stmt. of Mat. Facts as to Which There Is No Dispute [50] at ¶ 1.)[1] Mr. Sardonell owns a home

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[1] The local rules of this district require the nonmovant of a motion for summary judgment to respond to each of the movant's numbered material facts. The rules state, "All material facts contained in the moving party's statement which are not specifically controverted by the respondent's statement should be deemed admitted." LR 56.1.B.(2), NDGa. Nonetheless, rather than comply with this rule, plaintiffs simply filed their own statement of material facts, which makes no reference to defendants' statement. While the Court could deem all of

located at 3891 Blythewood Circle, Powder Springs, Georgia (hereinafter the "3891 house"), and Mrs. Sardonell owns a home located at 3890 Blythewood Circle, Powder Springs, Georgia (hereinafter the "3890 house"). (*Id.* at ¶¶ 2-3.) Since 1995, the Sardonells have operated a family business, "A Cool Flame Heating and Air, Inc.," from the 3891 house. (*Id.* at ¶¶ 4, 6; Pls.' Stmt. of Mat. Facts [58] at ¶ 8.) Mr. Sardonell has held a business license for this business since 1995. (*Id.* at ¶ 5; *Id.* at ¶ 8.) Because the Sardonells were operating the business from a residence, they were required to have a Customary Home Operation License.[2] (Comp. [1] at ¶ 9.) Plaintiffs state that they possessed such a license and operated their business without interference from the defendants up until September 1998. (*Id.*)

In September 1998, Mrs. Sardonell rented the 3890 house to an African-American family, pursuant to Section 8 of the United States Department of Agriculture Housing Program. (Defs.' Stmt. of Mat. Facts [50] at ¶ 35; Pls.' Stmt. of Mat. Facts [58] at ¶ 7.) Plaintiffs allege that prior to renting to this family, they were approached by a neighbor, Betty Jo Murphy, who requested that they

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defendants' facts admitted, it will make an attempt to discern which facts plaintiffs intended to deny. Facts to which plaintiffs made no response, however, are deemed admitted.

[2] The City of Powder Springs allows individuals to conduct the business of certain "customary home occupations" without obtaining a land use permit for operating a business in a residential area. The local ordinance lists twelve criteria for operating as a customary home based business, including restrictions on signage, vehicles, deliveries, and employees at the house. (Br. in Supp. of Mot. for Summ. J. [17] at Ex. B.)

refrain from renting to a non-white family. (Pls.' Stmt. of Mat. Facts [58] at ¶ 8.) Murphy, defendant Gary Noriega's mother-in-law, allegedly stated that she could assist them in finding legal mechanisms to avoid renting to non-whites. (*Id.*) Plaintiffs further allege that Murphy later told another neighbor, Gordon Powell, that she was going to "see what Gary could do about" the Sardonells renting through the Section 8 program. (*Id.* at ¶ 10.)

Plaintiffs claim that immediately after renting the 3890 house, they began to receive communications from the City of Powder Springs (hereinafter "the City") that they were in violation of the City's home occupation license in regard to the heating and air business. (*Id.* at ¶ 11.) Plaintiffs admit that the City claimed that they had received complaints about the activities at the 3891 house. (*Id.*)[3] Plaintiffs claim that Mr. Sardonell had not been operating his business any differently than in the past. (*Id.* at ¶ 12.) Plaintiffs state that Vince Blackmon, a building inspector and code compliance officer for Powder Springs, warned them in a phone call in October 1998 that there had been complaints about vans parked at their house. (Pls.' Stmt. of Mat. Facts [58] at ¶ 15.)

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[3] Citing the deposition of two neighbors, Murphy and Mary Sitherwood, plaintiffs claim that it is untrue that the City had received any complaints about activities at the 3891 house. (Pls.' Stmt. of Mat. Facts [58] at ¶ 13.) Sitherwood stated that she noticed several vans at the 3891 house, but stated that she never complained to the City. Murphy also stated that she made no complaints about the 3891 house. The fact that these two neighbors did not complain, though, does not establish that there were no complaints.

On January 25, 1999, Blackmon sent Mr. Sardonell a letter advising him that there had been "continuous complaints to the City concerning business vehicles parked on [the Sardonell's] premises; also, numerous deliveries." (Defs.' Stmt. of mat. Facts [50] at ¶ 16; Pls.' Stmt. of Mat. Facts [58] at ¶ 15.) Blackmon's letter explained that the Sardonells were in violation of their Customary Home Occupation License due to the number of business vehicles parked at the house and the fact that they received deliveries there. (Pls.' Stmt. of Mat. Facts [58] at ¶ 15.) The Sardonells were advised that they either needed to "remove all exterior evidence of a home business" or apply for a land use permit. (*Id.*) They were given until January 28, 1999 to comply with the letter. (*Id.*)

The Sardonells decided to appear before the City Council to request a land use permit. (*Id.* at ¶ 16.) Prior to the City Council meeting, however, plaintiffs had to attend the council workshop/agenda meeting and a zoning and planning meeting. (*Id.*) Plaintiffs claim that at the zoning and planning meeting, Mayor Sailors made the statement that Mrs. Sardonell's plans to rent her house through Section 8 sounded like a threat to him. (*Id.* at ¶ 17.)[4] The zoning and planning committee voted to let the matter go before the entire City Council. (*Id.*)

The Sardonells appeared at the March 1, 1999, Powder Springs City Council meeting to request a land use permit. (Defs.' Stmt. of Mat. Facts [50] at ¶ 17; Pls.' Stmt. of Mat. Facts [58] at ¶¶ 16, 17.) At the meeting, the

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[4] It is unclear to the Court whether or not the Sardonells utilized the Section 8 program.

Sardonells informed the city council members that they had located commercial property at 4018 Finley Road, Suite B, Powder Springs, Georgia, and were planning on moving their business there as of April 1. (*Id.* at ¶ 18; *Id.* at ¶ 20.)

The discussion centered around whether the Sardonells needed to obtain a land use permit for the thirty or so days that they would continue to operate their business from 3891 Blythewood Circle until they moved to Finley Road. the Sardonells stated that they would be able to comply with all aspects of their Customary Home Occupation License during the thirty days, except for the restriction on having more than one business vehicle on the premises. After a prolonged discussion, the City Council concluded that the most appropriate action was to continue consideration of the Sardonells' land use permit application until the next City Council meeting early in April, at which time the issue would hopefully be mooted if the Sardonells were able to move their business to Finley Road as planned. (Defs.' Stmt. of Mat. Facts [50] at ¶ 23.) The stated purpose of this vote was "to allow the Sardonells to continue to have two vans on their property until the first meeting in April." (*Id.*)

The Sardonells also raised the issue of how to handle their business license when they relocated. (*Id.* at ¶ 19.) They were told that they did not have to apply for a new license, that they could simply file a change of address. (*Id.* at ¶ 20.) Defendants claim that neither of the Sardonells disputed that they were in violation of their Customary Home Occupation License or that the complaints filed against them had anything to do with the tenants at the 3890 house. (*Id.* at ¶ 21.) Plaintiffs, however, state that

they asserted at this meeting that they were not in violation of the City's Home Occupation Ordinance and claim that there were neighbors at the meeting who supported their ability to continue operating their business without interference.

The Sardonells appeared at the next City Council meeting, conducted April 5, 1999. (Defs.' Stmt. of Mat. Facts [50] at ¶ 24; Pls.' Stmt. of Mat. Facts [58] at ¶ 22.) Mrs. Sardonell stated that she had decided that even though they had relocated their business to Finley Road, she wanted to pursue the land use permit for the 3891 house because she wanted to be able to park her vans there if she needed to. (*Id.* at ¶ 25; *Id.* at ¶ 22.)[5] Mayor Sailors asked Mrs. Sardonell is [sic] she had transferred the business license to the Finley Road location, to which she responded affirmatively. (Defs.' Stmt. of Mat. Facts [50] at ¶ 24.) The City Attorney, Ms. Bandy, instructed Mrs. Sardonell that as long as they did not have a business license for and were not conducting a business from the 3891 house, there were no zoning restrictions that would prohibit the Sardonells from parking their vehicles at their home. (*Id.* at ¶ 26.) Bandy mentioned to Mrs. Sardonell that there may be "certain regulations about parking on the street and that kind of thing," but that the City Council did not handle issues relating to residences that had nothing to do with business licenses. Although Mrs. Sardonell wanted assurance that she was free to park her vans at her home, Bandy made it clear to her that he was not in a position to tell her whether she could

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[5] Plaintiffs claim that they had moved the business on or before April 1, 1999. (Pls.' Stmt. of Mat. Facts [58] at ¶ 28.)

possibly be in violation of some other city ordinance. (*Id.* at ¶ 27.) The City Council and Mayor then voted affirmatively to grant Mrs. Sardonell's withdrawal of her land permit use application. (*Id.* at ¶ 28.) Plaintiffs made no allegations at this meeting that they had been wrongly targeted by the city. (*Id.* at ¶ 29.)

By this time, Mr. Sardonell had filled out the paperwork to transfer the business license to the new location. (*Id.* at ¶ 30.)[6] Plaintiffs claim that no business operations involving the heating and air company took place at the 3891 house after April 1, 1999. (Pls.' Stmt. of Mat. Facts [58] at ¶ 24.) Defendants, however, state that after numerous complaints of business activities at the 3891 house, City Manager Wayne Wright asked the chief of police to issue a citation. (Defs.' Stmt. of Mat. Facts [50] at ¶ 31.) Wright states that his request was in the normal course of business and was not the first time he had made such a request. (*Id.*)

On April 19, 1999, Mrs. Sardonell was issued a citation for violating a city zoning ordinance prohibiting individuals from operating a business without a license.

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[6] Plaintiffs allege that the business license was never transferred because the city imposed "roadblocks" to its transfer. (Pls.' Stmt. of Mat. Facts [58] at ¶ 29.) Mr. Sardonell claims that he was not allowed to pay the transfer fee and that the landlord was told, for the first time in the fourteen years he had been renting the building, that he had to obtain an inspection by the fire department and an occupational permit before the Sardonells could operate their business. (*Id.* at ¶ 30.) Mr. Sardonell claims he never received a new or amended license, and in May 1999, moved his business outside the City of Powder Springs. (*Id.* at ¶ 32.)

(Defs.' Stmt. of Mat Facts [50] at ¶ 33; Pls.' Stmt. of Mat. Facts [58] at ¶ 24.)[7] Plaintiffs claim that at the time Mrs.

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[7] Neither parties' statement of the facts contains a recitation of what happened with the citation. Defendants' original statement of material facts did give this background, and it is discussed below simply to provide a timeline of events:

A hearing was held before Judge Steve Yaklin on June 23, 1999. (Defs.' Stmt. of Mat. Facts [17] at ¶¶ 14-15; *Id.* at Exh. H.) The city's position at the hearing was that the Sardonells had transferred their business license as of April 1, but continued to conduct business from the 3890 house subsequent to that date. (*Id.* at Ex. H. at 2.) The City stated that its officials had observed vans picking up equipment from the home after April 1. (*Id.* at Ex. H. at 3.) After observing the vans for several weeks, the City concluded that the Sardonells had continued to operate their business from this location, which was no longer licensed.

Mrs. Sardonell's argument at the hearing appears to be that, although she had asked to transfer the business license to the Finley Road address, she was never informed that the transfer was complete, and therefore, at the time she was issued the citation, she had a valid business license for the 3890 house. (*Id.* at Ex. H. at 8.) Accordingly, Mrs. Sardonell contended that she was not guilty of operating a business without a license. She also stated that, if the City felt that she had violated zoning laws by having the vans make pick-ups from the 3890 house, she should have been cited for violating the appropriate zoning laws, not operating without a business license. (*Id.* at Ex. H. at 8-9.) Mrs. Sardonell made no mention of any discriminatory animus by the defendants towards her or her husband.

After hearing the arguments of the parties and the testimony of witnesses who observed the vans at the Blythewood property, Judge Yaklin stated that although he acknowledged Mrs. ardonell's technical defense that the transfer of the license may not have been finalized at the time of the citation, he was going to find that at the time the citation was issued, Mrs. Sardonell was no longer licensed to conduct business at the Blythewood Circle house. (*Id.* at Ex. H. at 11.)

Sardonell received the citation, Mr. Sardonell owned two business vans and, at most times, only one of these vans was parked at their home. (Pls.' Stmt. of Mat. Facts [58] at ¶ 26.) Plaintiffs then filed suit on July 27, 1999. (compl. [1].) As noted below, the criminal charge against Mrs. Sardonell was later dismissed.

Plaintiffs' complaint alleges that defendants' actions violated the Fair Housing Act, as well as 42 U.S.C. §§ 1981, 1982, 1983, and 1985. On January 12, 2000, defendants filed a motion for abstention on the grounds that there was an ongoing state proceeding concerning this case. (Mot. for Abstention [10].) Although discovery had not yet closed, defendants filed a motion for summary judgment on January 31, 2000. (First Mot. for Summ. J. [17].) On March 3, 2000, the Court issued an Order denying without prejudice defendants' motion for summary judgment and suspending discovery. (Order [31].) The Court later granted defendants' motion for abstention, and the case was stayed for a period of time. (Order [35].) Upon motion by plaintiffs to reopen the case because an entry of nolle prosequi had been entered as to the

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Because the violation carried with it up to a twelve month jail sentence, Mrs. Sardonell then requested that the matter be transferred to State Court for trial. (*Id.* at Ex. H. at 12.) At the conclusion of the June 23 hearing, Judge Yaklin signed an order binding the case over to State Court. As of the time Plaintiff filed her complaint in this Court on July 23, 1999, the State Court had not yet scheduled a trial or taken any further action regarding the citation.

underlying state claim, the Court reopened these proceedings. (Order [41].)[8]

Plaintiffs thereafter filed a motion to file a second amended complaint. (Mot. for Leave to File Pls.' Second Amendment to Compl. [48].) Defendants have renewed their motion for summary judgment. (Mot. for Summ. J. [50].) The Court addresses these and several other miscellaneous motions in this Order.

DISCUSSION

I. Motion for Summary Judgment

A. Summary Judgment Standard

Summary judgment is appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). A fact's materiality is determined by the controlling substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the nonmovant. *Id.* at 249-50.

Summary judgment is not properly viewed as a device that the trial court may, in its discretion, implement in lieu of a trial on the merits. Instead, Rule 56 of the Federal rules of Civil Procedure mandates the entry of summary judgment against a party who fails to make a

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[8] Curiously, plaintiffs appealed the grant of their own motion to reopen. (Notice of Appeal [44].)

showing sufficient to establish the existence of every element essential to that party's case on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In such a situation, there can be no genuine issue as to any material fact, as a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. *Id.* at 322-323 (quoting FED. R. CIV. P. 56(c)).

The movant bears the initial responsibility of asserting the basis for his motion. *Id.* at 323. However, the movant is not required to negate his opponent's claim. The movant may discharge his burden by merely " 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the non-moving party's case." *Id.* at 325. After the movant has carried his burden, the non-moving party is then required to "go beyond the pleading" and present competent evidence designating "specific facts showing that there is a genuine issue for trial." *Id.* at 324. While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, *Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988), "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson*, 477 U.S. at 247-48 (1986).

B. Plaintiffs' Claims

1. Fair Housing Act

Before addressing the merits of plaintiffs' Fair Housing Act claim, the Court pauses to state that it is difficult to even discern legal underpinnings of this claim. In their complaint, plaintiffs state, "The conduct of the Defendants constitute a violation for the 42 U.S.C. § 3604 in that defendants acted in concert and under color of state law to conspire to deny plaintiffs the right to rent their residence to individuals without regard to race. (Compl. [1] at ¶ 21.) That is the full extent that the Fair Housing Act is discussed in the complaint. In their motion for summary judgment, defendants argue that plaintiffs have failed to state a cognizable claim under the Fair Housing Act. (Br. in Supp. of Mot. for Summ. J. [50] at 10-38.) The Court must agree.

Plaintiffs contend that they have stated a claim under 42 U.S.C. § 3604. In its entirety, § 3064 reads:

> As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful –
>
> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of

race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of –

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental

of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of –

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes –

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that –

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose

of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means –

> (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
>
> (B) ground floor units in other buildings consisting of 4 or more units.
>
> (8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.
>
> (9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

42 U.S.C. § 3604.

Defendants contend that plaintiffs have failed to state a claim that any of the defendants, in either their official or individual capacities, discriminated against plaintiffs in violation of the FHA by intentionally discriminating, taking actions that create a disparate impact, or failing to make appropriate accommodations. Indeed, plaintiffs fail to allege any impact on the rental of their home to the African-American family, and it would seem that plaintiffs lack any standing to bring a FHA claim.[9] In response,

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[9] Defendants also point out that the FHA exempts "any single-family house sold or rented by an owner provided that such individual owner does not own more than three such single-family houses at one time." 42 U.S.C. § 3603(b)(1).

plaintiffs state that their claims "are based upon the Defendants' violation of 42 U.S.C. § 3604 sections (2), (3), and (5)." (Pls.' Mem. and Opp'n to Defs.' Mot. for Summ. J. [58] at 17.) In support of her argument that these subsections provide plaintiffs relief, however, plaintiffs' counsel cites no cases in which § 3604(2), (3), or (5) are mentioned. (*See id.* at 18-19.) This is not surprising, as there are no subsections (2), (3), or (5) to § 3604.

The Court has conducted its own independent analysis, and simply cannot discern the basis of plaintiffs' claims. From the facts alleged by plaintiffs, it appears that what they are trying to claim is that defendants retaliated against them for renting to non-whites. Plaintiffs, however, have failed to provide one cite to a case in which this sort of claim was cognizable under the FHA. Plaintiffs are not acting *pro se.* In fact, they have had two different firms work on this case. As such, the Court would think that if counsel were so convinced that such a case existed, able counsel would have been able to identify such a case, or at least cite to analogous cases. Instead of citing any case law, however, plaintiffs simply repeat the facts of the case again. Without any direction from plaintiffs as to the legal underpinnings of their FHA claim, the Court has no option but to **GRANT** defendants' motion for summary judgment on this count.

2. Section 1983

Plaintiffs' second claim is that "[t]he conduct of the defendants [is] actionable under 42 U.S.C. § 1983 as a violation of the plaintiffs' right to equal protection under the laws and substantive due process, as well as their

right not to be deprived of property rights without procedural due process." (Compl. [1] at ¶ 23.) Section 1983 provides a federal remedy for the deprivation of rights, privileges, or immunities protected by the Constitution or the laws of the United States.[10] *See Patsy v. Board of Regents*, 457 U.S. 496, 502-08 (1982); *Mitchum v. Foster*, 407 U.S. 225, 238-42 (1972); *McNeese v. Board of Educ.*, 373 U.S. 668, 671-72 (1963). In order to establish a claim under § 1983, plaintiffs must show a violation of a right secured by the Constitution of the United States, and also that the deprivation of that right was committed by a person acting under color of state law. *Cummings v. DeKalb County*, 24 F.3d 1349 (11th Cir. 1994); *see also Graham v. Connor*, 490 U.S. 386, 393-94 (1989) ("§ 1983 'is not itself a source of substantive rights,' but merely provides 'a

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[10] 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any Sate or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in the action at law, suit in equity, or other proper proceedings for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, an Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

method for vindicating federal rights elsewhere conferred' ") (quoting *Baker v. McCollan,* 443 U.S. 137, 144 n.3 (1979)).

In their complaint, plaintiffs claim that defendants' behavior violated their rights to equal protection under the law, substantive due process, and the right not to be deprived of property rights without procedural due process. (Compl. [1] at ¶ 23.) Plaintiffs' brief in response to defendants' motion for summary judgment provides no further elucidation as to the legal underpinnings of this claim. The Court nonetheless reviews the elements of each constitutional claim to illustrate why plaintiffs' claim fails.

a) Equal Protection

"Equal protection claims can be divided into three broad categories. The first and most common type is that a statute discriminates on its face." *E&T Realty v. Strickland,* 830 F.2d 1107, 1112 n.5 (11th Cir. 1987) (citations omitted). Plaintiffs do not assert that such a statute is at issue in this case. "The second type of equal protection claim is that neutral application of a facially neutral statute has a disparate impact." *Id.* Plaintiff's complaint does not appear to assert a disparate impact claim.

"The third type of claim is that defendants are unequally administering a facially neutral statute." *Id.* While a liberal reading of plaintiffs' pleading may indicate that this is the type of claim that they are attempting to bring, they have failed to assert the required elements of this claim. "In order to prevail on an equal protection

claim based on the application of a facially neutral statute, it must be established that: (1) the plaintiff was treated differently than similarly situated persons; and (2) the defendant unequally applied the facially neutral statute for the purpose of discriminating against the plaintiff." *Strickland v. Alderman,* 74 F.3d 260, 264 (11th Cir. 1996) (citing *E&T Realty,* 830 F.2d at 1109-10). Regarding the second prong, an "unequal application" claim requires "an element of intentional or purposeful discrimination." *Snowden v. Hughes,* 321 U.S. 1, 8 (1944).

The Court assumes that plaintiffs' equal protection claim is that defendants selectively enforced the city's Home Occupation Business License requirement, refused to transfer their business license, and refused to grant plaintiffs a land use permit, and cited Mrs. Sardonell for operating a business without a license for the discriminatory reason that plaintiffs had rented their other house to an African-American family. In order to state a claim for selective enforcement, however, plaintiffs must show that there were other similarly situated individuals who were treated differently. In their brief in opposition to defendants' motion for summary judgment, plaintiffs state "the affidavits of John Long and Gordon and Sheila Powell all set forth their observation that there are numerous violations of the City's municipal ordinances and in and around the neighborhood that the plaintiffs live in." (Pls.' Mem. and Opp'n to Defs.' Mot. for Summ. J. [58] at 30.) Upon reviewing those affidavits, however, the Court saw no mention of instances of the City failing to enforce City ordinances. (Affs. [56].) Having provided the Court with no comparators at all, similarly situated or not, plaintiffs' equal protection claim fails as a matter of law.

b) Procedural and Substantive Due Process

The Court is unsure of the basis of plaintiffs' substantive due process claim. Plaintiffs cite one case is [sic] support of their claim, *Hibben v. Smith,* 191 U.S. 310 (1903). *Hibben* involved a challenge to the method in which real property was assessed. The Court can find no correlation between *Hibben* and the present case that would serve to elucidate plaintiffs' due process claims. In their complaint, plaintiffs also allege that defendants have violated their "right not to be deprived of property without due process of law." (Compl. [1] at ¶ 23.) As with the previous two claims, plaintiffs fail to flesh out the basis for their procedural due process claim. It is insufficient for a plaintiff to merely allege a claim and in support recite the facts without providing any legal analysis. While a plaintiff need only provide a defendant notice of his claims in the complaint, at the summary judgment stage, the nonmovant certainly should be prepared to argue his claim. This necessarily involves citing legal authority or, if none exists, explaining to the court why it should forge new ground in the law. Here, plaintiffs have done neither. The Court will not act as legal advocate for one party, doing its legal research and creating its arguments, as it would be unfair to the other side to do so. In the present case, the Court is surprised defendants were even able to respond to plaintiffs' claims, as vague as plaintiffs were in making them.[11]

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[11] Although the Court is uncertain of the exact nature of plaintiffs' claims, it would appear that both their substantive and procedural due process claims are foreclosed under *Rymer v. Douglas County,* 764 F.2d 796 (11th Cir. 1985). In *Rymer,* the

Plaintiff has failed to establish a prima facie case of § 1983 discrimination. As stated above, a § 1983 claim

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plaintiffs sued the county after the county issued a building permit for a lot that turned out to be unsuitable for residential use because a high water table precluded the use of a septic system. As to the substantive due process claim, the court stated:

> The current test in this circuit as to whether there has been a violation of substantive due process in the context of § 1983 is twofold. First it must be determined whether there has been a deprivation of a federal constitutionally protected interest, and secondly, whether the deprivation, if any, is the result of an abuse of governmental power sufficient to raise an ordinary tort to the stature of a constitutional violation.

Id. at 801. In the present case, plaintiffs have failed to allege a deprivation of a constitutionally protected interest. If plaintiffs base this claim on the failure of Powder Springs to grant them a land use permit, the claim clearly fails. *See DeKalb Stone, Inc. v. County of DeKalb, Georgia*, 106 F.3d 956, 959 (11th Cir. 1997) ("It is well established that land use rights, as property rights generally, are state-created rights [rather than constitutional].").

As to procedural due process, the *Rymer* court stated as follows:

> Under *Hudson*, a plaintiff cannot bring a property claim against a governmental body if the governmental body being sued provides a meaningful post-deprivation remedy. 104 S. Ct. at 3203. The Court determined that a constitutional tort did not exist unless the state refused to provide a meaningful post-deprivation remedy. It is our determination that the law of Georgia provides an adequate means to address the claims alleged by appellants in this case. A county and its officials can be sued under Georgia law for the type of injury alleged by the appellants.

Id. at 803.

requires a showing of two elements: "(1) the act or omission deprived plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States, and (2) that the act or omission was done by a person acting under color of law." *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330 (1986). Plaintiff has failed to assert that he was denied a federal right, privilege, or immunity.[12] Accordingly, the Court **GRANTS** defendants' motion for summary judgment as to plaintiff's § 1983 claim.[13]

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[12] A violation of §§ 1981, 1982, and 1985 could also give rise to a § 1983 claim, but as discussed in greater detail below, plaintiffs have failed to make a prima facie case under any of these statutes either.

[13] In addition to this fatal flaw, defendants also argue that defendants Noriega and Sailors were entitled to legislative immunity because they were acting in their official capacities ruling on zoning and land use issues. *See Baytree of Inverray Realty Partners v. City of Lauderhill*, 873 F.2d 1407, 1409 (11th Cir. 1989) (holding absolute legislative immunity available for defendants regarding failure to grant an application to amend a city zoning ordinance). Further, defendants allege that all individual defendants are entitled to qualified immunity because plaintiffs have failed to establish that they acted in violation of clearly established law. Lastly, defendants contend that the City of Powder Springs and the defendants in the official capacities are immune from suit because plaintiffs failed to establish liability under *Monnell v. Department of Soc. Servs.*, 436 U.S. 658, 690 (1978). Having found that plaintiffs failed to establish that they were denied a federal right, the Court need not reach any of these issues. It notes, however, that all of these defenses appear to be sound.

3. Section 1981

Plaintiffs' third claim is that defendants violated 42 U.S.C. § 1981. Section 1981 prohibits racial discrimination in the making and enforcing of contracts. The statute reads:

> All persons within the jurisdiction of the United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens.

42 U.S.C. § 1981.

To establish a prima facie case of discrimination under § 1981, a plaintiff must prove purposeful discrimination. *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 (1989). The elements of a section 1981 claim are: "(1) That plaintiff is a member of a racial minority; (2) An intent to discriminate on the basis of race by the defendant; and (3) That the discrimination concerned . . . the right to 'make and enforce contracts.' " *Baker v. McDonald's Corp.*, 686 F. Supp. 1474, 1481 (S.D. Fla. 1987), *aff'd by* 865 F.2d 1272. Although the language of § 1981 speaks of racial minorities, it is applicable to racial discrimination against white persons as well. *See McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 287 (1976).[14] Plaintiffs, however, do not appear to be alleging that they were discriminated against because they were white, but rather, because they entered into a contract with a black person. Plaintiffs

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[14] The Court's understanding of the facts is that while Mrs. Sardonell's tenants are black, plaintiffs are both white.

have not cited any case law allowing this sort of "association" claim under § 1981. Furthermore, while there are circumstances where a plaintiff may have standing to assert a claim on behalf of a third party, plaintiffs have not alleged that this is what they are doing, nor do the facts indicate that third-party standing would be appropriate in this case.

More importantly perhaps, plaintiffs have not asserted that defendants interfered with their ability to "make and enforce contracts." None of the defendants' actions related to the agreement between Mrs. Sardonell and the tenants, and there is no indication that the rental agreement was impacted in any way by defendants' alleged actions. Accordingly, defendants' motion for summary judgment is **GRANTED** as to plaintiffs' § 1981 claim.

4. Section 1982

Plaintiffs' fourth claim alleges a violation of 42 U.S.C. § 1982. Section 1982 provides: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and covey [sic] real and personal property." Again, as with the claims discussed above, plaintiffs have failed to describe the legal underpinnings of their claim, and plaintiffs' situation would not appear to fit within the scope of a § 1982 claim. In a typical § 1982 claim, a plaintiff must show:

> (1) that he is a member of a racial minority; (2) that he applied for and was qualified to rent or purchase certain property or housing; (3) that he

> was rejected; and (4) that the housing or rental opportunity remained available thereafter.

Bell v. Mike Ford Realty Co., 857 F. Supp. 1550 (S.D. Ala. 1994). Plaintiffs' claim simply does not fit this framework, and plaintiffs have provided the Court with no further explanation of why they feel they have a cognizable § 1982 claim. Accordingly, plaintiffs' § 1982 claim fails as a matter of law.

5. Section 1985

Plaintiffs' last claim is that defendants entered into a conspiracy to deprive plaintiff of equal protection of the laws in violation of 42 U.S.C. § 1985. Although plaintiffs do not specify, the Court assumes that they are bringing their claim under § 1985(3), which provides in part:

> If two or more persons . . . conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may

> have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U,.S.C. § 1985(3).

This section was intended to encompass only those conspiracies motivated by animus against the kind of classes Congress was trying to protect. *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *Kimble v. D.J. McDuffy, Inc.*, 648 F.2d 340, 347 (5th Cir.), *cert. denied*, 454 U.S. 1110 (1981). The central concern of the enactors of 42 U.S.C. § 1985 was "combating the violent and other efforts of the Klan and its allies to resist and to frustrate the intended effects of the Thirteenth, Fourteenth and Fifteenth Amendments." *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 837 (1983). Before a defendant can be held liable under this section, a plaintiff must be a victim of a class-based discrimination. *Crowe v. Lucas*, 595 F.2d 985 (5th Cir. 1979). A plaintiff in an action under this section must demonstrate he is a member of some class discriminated against, otherwise, his claim must fail. *Hutchens v. Beckham*, 521 F. Supp. 426, 429 (S.D. Ga. 1981).

In addition, in order to recover under § 1985(3), plaintiffs must allege and prove the following elements:

> (1) a conspiracy;
>
> (2) for the purpose of depriving, directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws;
>
> (3) an overt act in furtherance of the object of the conspiracy; and

> (4) that the plaintiff (a) was injured in his person or property, or (b) was deprived of having and exercising any right or privilege of a United States citizen.

Byrd v. Clark, 783 F.2d 1002, 1007 (11th Cir. 1986), *abrogated on other grounds by Nolin v. Isbell*, 207 F.3d 1253 (11th Cir. 2000). "the language of Section 1985 which requires an intent to deprive one of equal protection or equal privileges and immunities means that there must be some racial or otherwise class-based invidiously discriminatory animus behind the conspirators' action." *Id.* at 1007-08. Additionally, merely conclusory, vague and general allegations of conspiracy are not sufficient. *Fullman v. Graddick*, 739 F.2d 553, 556-57 (11th Cir. 1984). "[C]ourts insist that plaintiffs state with specificity the facts supporting an allegation of conspiracy in order to control frivolous conspiracy suits under §§ 1983." *Schlosser v. Coleman*, 818 F. Supp. 1534, 1537 (M.D. Fla. 1993) (citing *Slotnick v. Staviskey*, 560 F.2d 31 (1st Cir. 1977)).

As with their other claims, plaintiffs have done nothing more than repeat the facts with no explanation of their legal significance. Plaintiffs have not alleged that they were a member of a class discriminated against and have not alleged a conspiracy with specificity. Accordingly, plaintiffs' § 1985 claim fails as well.

II. Plaintiffs' Motion for Leave to File a Second Amended Complaint

On December 12, 2000, plaintiffs filed a motion to amend their complaint in order to add two new defendants, Betty Jo Murphy and Catherine Rapener, and to

add several new factual allegations as well as a state law claim. (Mot. for Leave to File Pls.' Second Am. to Compl. [48].) Defendants have opposed the motion to amend on the grounds that (1) at the time plaintiffs filed their motion to amend, the case has been ongoing for fifteen months; (2) discovery had closed; (3) plaintiffs have had full knowledge since their depositions were taken in March 2000 of whatever role Murphy and Rapener played; (4) plaintiffs have supplied no reason for the delay in adding these parties and claims; (5) no new facts have been developed since discovery; and (6) plaintiffs have failed to properly present a request to add new parties. (*Id.*) Although plaintiffs filed a reply to defendants' response, they failed to address any of these concerns, and instead simply argued that courts usually liberally allow amendment and that they would be unable to bring claims against the new defendants if the Court did not grant their motion. (Pls.' Reply to Defs.' Opp'n to Pls' Mot. for Leave to File Second Am. Compl. [57].)

At this stage in the litigation, Rule 15(a) of the Federal Rules of Civil Procedure allows a party to amend its pleading "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). "Courts have interpreted [amendment] provisions liberally, in line with the Federal Rules' overall goal of resolving disputes, insofar as possible, on the merits and in a single judicial proceeding." *Spartan Grain & Mill Co. v. Ayers*, 517 F.2d

214, 220 (5th Cir. 1975).[15] In explaining the amendment standard, the Eleventh Circuit has observed that "unless a substantial reason exists to deny leave to amend, the discretion of the district court is not broad enough to permit denial." *Shipner v. Eastern Air Lines, Inc.*, 868 F.2d 401, 407 (11th Cir. 1989). In determining whether a substantial reason exists to deny leave to amend, the district court should consider the following factors: (1) undue delay, bad faith, or dilatory motive on the part of the movant, (2) repeated failure to cure deficiencies by amendments previously allowed, (3) undue prejudice to the opposing party by virtue of the allowance of the amendment, and (4) futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

The Court denies plaintiff's motion to amend on the basis of plaintiffs' undue delay. Plaintiffs have offered no explanation why they did not bring these claims at the time they filed their original complaint or at least soon after taking the depositions in March 2000. Instead, plaintiffs have delayed until after the discovery period has run in the case before attempting to add the claims. Permitting this amendment could trigger another discovery period and would subject defendants to further expense as a result of plaintiffs' dilatory actions.

In addition, defendants are correct that in order to add new defendants, Rule 20 is what controls rather than

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[15] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit Court of Appeals handed down prior to the close of business on September 30, 1981.

Rule 15. Rule 20 of the Federal Rules of Civil Procedure provides that all persons may be joined in one action as defendants if plaintiff asserts against them any right to relief arising out of the same transaction or occurrence and if questions of law and fact common to all defendants will arise in the action. Fed. R. Civ. P. 20. Even if the Court were to construe plaintiffs' motion as one to add new parties under Rule 20, the motion fails for the same reason as their motion to add new allegations and add the state claim. Plaintiffs did not seek to add defendants Murphy and Rapener until after the discovery period had expired, and the Court concludes that they unduly delayed in seeking to add these defendants. Accordingly, the Court **DENIES** plaintiffs' motion to join Murphy and Rapener as party defendants.

III. Plaintiffs' Motion to Strike

Plaintiffs have brought a motion to strike portions of defendants' brief in support of their motion for summary judgment. (Mot. to Strike Portions of the Defs.' Br. in Supp. of Mot. for Summ. J. [60].) In their motion to strike, plaintiffs argue (1) that the Court should not consider an attachment to the affidavit of Catherine Rapener which purports to be a business license, but which has obviously been altered; (2) that the Court should not consider the transcripts of the City Council meetings because they are hearsay and not reliable; and (3) that several cases cited by defendants were not in proper citation form and therefore should not be considered. The Court did not rely on the Rapener affidavit or the transcripts in granting defendants' motion for summary judgment. Accordingly, there is no need to reach the issue of whether they

should be stricken. As to defendants' citations, the Court was able to find the cases cited without much difficulty. The fact that defendants' counsel may not have cited the cases in perfect "Bluebook" form is not a legitimate reason to strike the cites from defendants' argument. Accordingly, plaintiffs' motion to strike is DENIED.

CONCLUSION

For the foregoing reasons, the Court finds that plaintiffs' Motion for Leave to File a Second Amendment to Complaint [48] is **DENIED**, defendants' Motion for Summary Judgment [50] is **GRANTED**, plaintiffs' Motion to Strike Portions of Defendants' Brief [60] is **DENIED**, plaintiffs' Motion for Hearing on Defendants' Motion for Summary Judgment [61] is **DENIED**, plaintiffs' Motion for Leave of Court to File Excess Page Limitation [65] is **GRANTED**, and plaintiffs' Motion to Continue Consideration of Defendants' Motion for Summary Judgment [66] is **DENIED AS MOOT.**

SO ORDERED, this 19 day of April, 2001.

/s/ Julie E. Carnes
JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-12824-EE

EVA CHARLENE SARDONELL,
DOUGLAS SARDONELL,

Plaintiffs-Appellants,

versus

GARY NORIEGA, individually and as Council Member, City of Powder Springs,
WAYNE WRIGHT, individually and as City Manager, City of Powder Springs,
RICHARD SAILORS, individually and as Mayor, City of Powder Springs,
VINCE BLACKMON, individually and as Code Compliance Officer,
CITY OF POWDER SPRINGS,

On Appeal from the United States District Court for the Northern District of Georgia

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(Filed Feb. 19, 2002)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19___, ___ F.2d ___).

Before: CARNES, HULL and GODBOLD, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ [Illegible]
UNITED STATES CIRCUIT JUDGE

Supreme Court, U.S.
FILED
JUN 17 2002
OFFICE OF THE CLERK

No. 01-1712

In The
Supreme Court of the United States

EVA CHARLENE SARDONELL and
DOUGLAS SARDONELL,

Petitioners,

v.

GARY NORIEGA, individually, and as a Council Member, City of Powder Springs; WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs; RICHARD SAILORS, individually, and as Mayor, City of Powder Springs; VINCE BLACKMON, individually, and as Code Compliance Officer, City of Powder Springs; and the CITY OF POWDER SPRINGS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Reasons for Denying the Writ 1

A. The petition misrepresents the facts in the case 2

B. The petition misrepresents the Question of Law before this Court 8

C. The petition misstates the basis for the U.S. District Court for the Northern District of Georgia's, Atlanta Division, dismissal of Petitioners' 42 U.S.C. § 1982 allegation 10

D. The Eleventh Circuit Court of Appeals' ruling does not conflict with *Sullivan v. Little Hunting Park, Inc.* 12

E. Neither the record nor the decisions below raise the Question Presented by the petition 21

F. The petition misstates the legal standard for summary judgment 21

G. The petition misstates the viability of the defenses of qualified immunity, legislative immunity and sovereign immunity 24

Summary and Conclusion 25

TABLE OF AUTHORITIES

Page

CASES CITED:

Abel v. Bonfanti, 625 F. Supp. 263 (S.D.N.Y. 1985).....18

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).....22

Barrows v. Jackson, 346 U.S. 249 (1953).....14

Bell v. Mike Ford Realty Co., 857 F. Supp. 1550 (S.D.Ala. 1994).....11

Bradley v. Carydale Enterprises, 730 F. Supp. 709 (E.D. Va. 1989).....16

Celotex Corp. v. Catrett, 477 U.S. 317 (1986).....21, 22

City of Memphis v. Greene, 451 U.S. 100, 101 S. Ct. 1584 (1981).....19

Cutting v. Muzzey, 724 F.2d 259 (1st Cir. 1984).....14

Dale v. City of Chicago, 672 F. Supp. 330 (N.D.Ill. 1987).....14

Des Vergnes v. Seekonk Water District, 601 F.2d 9 (1st Cir. 1979).....14

Fitzpatrick v. City of Atlanta, 2 F.3d 112 (11th Cir. 1993).....23

Graves v. Van Buskirk, 1991 WL 21545 (Ohio App. 9 Dist.).....17, 18

Inland Mediation Board v. City of Pomona, 158 F. Supp. 2d 1120 (2001).....16, 17, 18

Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).....18

Monell v. Dept. of Social Services, 436 U.S. 658 (1978).....24

TABLE OF AUTHORITIES – Continued

Page

Patterson v. McClean Credit Union, 491 U.S. 164 (1989) 18

Pisello v. Town of Brookhaven, 933 F. Supp. 202 (E.D.N.Y. 1996) 14

Samples v. City of Atlanta, 846 F.2d 1328 (11th Cir. 1988) 22

Stackhouse v. DeSitter, 566 F. Supp. 865 (N.D.Ill. 1983) 18

Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969) ..... *passim*

Tillman v. Wheaton-Haven Recreation Assn., 410 U.S. 431, 93 S. Ct. 1090, 35 L.Ed.2d 403 (1973) 16

Warth v. Seldin, 422 U.S. 490, 95 S. Ct. 2197 (1975) .. 15, 16

Westray v. The Porthole, Inc., 586 F. Supp. 834 (1984) 19

STATUTES CITED:

42 U.S.C. § 1981 ..... 10, 11, 19

42 U.S.C. § 1982 ..... *passim*

42 U.S.C. § 1983 13

42 U.S.C. § 1985 13

Fair Housing Act 10

RULES CITED:

Fed. R. Civ. P. 56(e) 22

LR 56.1.B(2), N.D.Ga. 23

REASONS FOR DENYING THE WRIT

Succinctly stated, the Eleventh Circuit Court of Appeals' ruling does not conflict with *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). The seminal issue in *Sullivan* is not the issue of race. The controlling issue in granting standing in *Sullivan* and its progeny is whether a nexus exists between a property interest and a discriminatory interference with that property interest. Neither the record nor the decision below raises the question presented by the Petitioner. The issue of standing was never raised nor addressed by either the District Court or the Eleventh Circuit Court of Appeals.

Despite Petitioners' histrionics, the facts in the case demonstrate no more than Respondents' enforcement of the City's Home Occupation Ordinance. All of Respondents' actions were taken because of business activity at the house owned solely by Douglas Sardonell (the 3891 house). Respondents took no action that affected the rental house owned by Eva Sardonell (the 3890 house). There is no nexus between Eva Sardonell's property interest and any action taken by Respondents. The nexus between a property interest and an interference with that property interest required by *Sullivan* does not exist. The Eleventh Circuit Court of Appeals correctly held that "no connection exists between the alleged acts and a violation of 42 U.S.C. § 1982."

The Eleventh Circuit Court of Appeals' decision is in conformity with *Sullivan v. Little Hunting Park, Inc.* As such, the Eleventh Circuit Court of Appeals' decision should be upheld.

The Question of Law presented to this Court is misrepresented. For the arguments set forth throughout this

brief, the Question of Law before this Court should be summarily dismissed.

A. The Petition misrepresents the facts in the case.

Petitioners Douglas and Eva Charlene Sardonell own two houses in the City of Powder Springs, Georgia. Douglas Sardonell owns one house located at 3891 Blythewood Circle, Powder Springs, Georgia (hereinafter the "3891 house") and operates a business, A Cool Flame Heating & Air Conditioning ("A Cool Flame"), from that house. Douglas Sardonell is the sole owner of A Cool Flame. Eva Charlene Sardonell owns a house located at 3890 Blythewood Circle, Powder Springs, Georgia (hereinafter the "3890 house").

Since October of 1995, Douglas Sardonell has been in possession of a business (home occupation) license issued by the City of Powder Springs. App. 4. In 1995 Douglas Sardonell was the only employee of A Cool Flame. D. Sardonell depo., p. 12, line 17. The business used one vehicle, a van, in its operations. D. Sardonell depo., p. 12, line 24 and p. 13, line 2. The business prospered. In February of 1998 a second van was purchased for the business. D. Sardonell depo., p. 15, line 9. In March of 1999 the business had three full-time employees. D. Sardonell depo., p. 15, line 11. As of March 2000, the business utilized three vans and one mid-sized pickup truck. D. Sardonell depo., p. 14, line 2. Neighbors noted the increase in business activity at the house. Sitherwood depo., pp. 19-21, lines 20-6; Murphy depo., pp. 36-37, lines 1-25.

Respondent Gary Noriega is a member of the City Council for the City of Powder Springs. Noriega depo., p. 8, line 14. Councilman Noriega has lived in Blythewood Estates, the same subdivision as the Sardonells, since 1986. Noriega deposition, p. 12, line 23. In either the end of 1997 or the beginning of 1998, Councilman Noriega began to receive second and third hand complaints concerning the Sardonells' business activities at the 3891 house. Noriega deposition, p. 37, lines 4-18.

A couple of weeks later, Noriega rode by the Sardonell residence (the 3891 house) and personally noticed the business activity. Noriega depo. p. 41, lines 14-16 and p. 43, lines 6-10. Noriega turned the complaint over to the City Manager, Respondent Wayne Wright. Noriega depo., p. 38, lines 14-18. After receiving the complaints, Manager Wright asked Respondent Vince Blackmon, the City Code Enforcement Officer, to investigate the complaints against the Sardonells. Mr. Blackmon inspected Douglas Sardonell's property and orally informed him of the violations of the City Home Occupation Ordinance. Wright deposition, p. 65, line 16. Upon receipt of an anonymous complaint of business activity and without further direction, Blackmon sent a warning letter to the Sardonells on January 25, 1999. Wright deposition, p. 66, line 5.

Following receipt of the warning letter, the Sardonells appeared before the Mayor and City Council at the March 1, 1999 City Council meeting. Doug Sardonell requested a land use permit to allow him to do what he could not do under the provision of the Home Occupation Ordinance:

park two commercial vehicles at 3891 Blythewood Circle.[1] Pet.App. 37; App. 14 and 23.

The Sardonells told the Mayor and City Council that they would be moving their business to a location that was commercially zoned on April 1, 1999. App. 14 and 21. Later in the meeting they asked how to handle the business license when they relocated. App. 21. The Mayor and City Council informed the Sardonells that they did not have to apply for a new license, but they could simply file a change of address. App. 37.

In response to the Sardonells' request, the Mayor and City Council voted to continue Doug Sardonell's application for a land use permit until the April 5, 1999 meeting of the Mayor and City Council. App. 15 and 35. The stated purpose of the vote was to allow the Sardonells to continue to have two vans on their property until the first meeting in April. App. 15 and 35.

On April 5, 1999, Eva Sardonell appeared before the Mayor and City Council of the City of Powder Springs at the regularly called City Council meeting and stated that the business had been relocated to a commercially zoned site at 4018 Lindley Road, Suite B, Powder Springs, Georgia. App. 45 and 50. Eva Sardonell stated to the Mayor and City Council that even though the business had been relocated to the Lindley Road address, that she wanted to pursue the land use permit for 3891 Blythewood Circle because she wanted to be able to park the vans there if she needed to. App. 49.

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[1] Although the District Court did not rely upon the transcripts of the March 1, 1999 and April 5, 1999 city council meetings, reference to the transcripts is made to establish the chronology of events.

The City Attorney Ms. Bandy instructed Plaintiff Eva Sardonell that as long as Doug Sardonell did not have a business license for and was not conducting a business from the 3891 Blythewood Circle house, there were no zoning restrictions that would prohibit the Sardonells from parking their vehicles at their home. App. 52. Although Mrs. Sardonell wanted assurance that she was free to park her vans at her home, Ms. Bandy made it clear to her that she was not in a position to tell her whether she could possibly be in violation of some other City ordinance. App. 52.

After being informed by the City Attorney that the appropriate action was to vote to withdraw the Sardonells' request because it was no longer necessary, the Mayor and City Council voted affirmatively to grant the withdrawal of the land use permit application. App. 45 and 53. Plaintiffs made no allegations at the meeting that they had been wrongly targeted by the City. Pet.App. 12.

Douglas Sardonell transferred his business license from 3891 Blythewood Circle to the new location of their business. See Catherine Raper Affidavit.[2] App. 57-63. Despite the Sardonells' statement that they had moved the business to a commercially zoned location, business activities continued at the 3891 house.

After receiving continuing complaints of business activities at the 3891 Blythewood Circle residence, Manager Wright asked the Chief of Police to issue a citation to the Sardonells. W. Wright deposition, p. 109, line 5.

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[2] Although the District Court did not rely upon the affidavit of Catherine Raper, reference to the affidavit is made to establish the chronology of events.

Despite Petitioners' statement to the contrary, Wright's request was in the normal course of business; he had asked the police chief to issue citations before. W. Wright deposition, p. 109, line 23. The citation was issued by Lt. Freeland, the police officer charged at that time with the issuance of citations. See deposition of Lt. Freeland, p. 50, lines 23-25.

On April 19, 1999, Lt. James Freeland of the City of Powder Springs Police Department went to 3891 Blythewood Circle to issue a citation for operating a business without a license. App. 6 and the deposition of James E. Freeland along with a copy of the citation attached thereto. Plaintiff Eva Sardonell answered the door. Officer Freeland issued the citation to Eva Sardonell. See deposition of James E. Freeland, p. 50, lines 23-24.

As stated by Manager Wright, the procedure followed in the issuance of the citation to Eva Sardonell is the same procedure followed in instances of other flagrant code violations. W. Wright deposition, pp. 98-102.

In another instance in the same neighborhood, the exact same process was followed: a complaint was received by Manager Wright from Councilman Noriega. W. Wright deposition, p. 99, line 8. Manager Wright requested that Vince Blackmon investigate the complaint and address it. W. Wright deposition, p. 100, line 3. The citizen, Gordon Powell, was ultimately cited for violation of his home occupation license. Citizen Powell was cited; pled guilty; paid a fine; and had his license revoked. W. Wright deposition, p. 101, line 9.

Manager Wright made no distinction in the handling of the actions concerning the Sardonell ordinance violation at the 3891 house and any other ordinance violation. The

one distinction in the present instance is that the Sardonells' "scoffed" at City regulations. The Sardonells were fully aware of the requirements of the Code of Ordinances of the City of Powder Springs and continued to violate them over and over. Wright depo. p. 48, lines 11-20. Despite a verbal warning and the issuance of a warning letter, the Sardonells continued to flagrantly violate City ordinances. As a consequence, a citation was issued. All actions taken by Manager Wright were based upon legitimate government concerns, not discrimination. Petitioners' have never denied violating the City's Home Occupation Ordinance.

Once the citation had been issued, Eva Sardonell requested that the case be transferred to state court. Pet.App. 13, footnote 7. Despite Petitioners' allegations to the contrary, once the request had been made, the state court took jurisdiction. The Cobb County State Court calendar determined the date and time for disposition of the case. Once Eva Sardonell requested that her case be transferred to State Court, the length of time her charges remained pending was outside the hands of the City and controlled by the Cobb County State Court. The Cobb County Solicitor ultimately dropped the charges against Eva Sardonell because she was not the owner of A Cool Flame. The merits of the case were never reached.

In September 1998, Eva Sardonell rented the 3890 house to an African-American family, allegedly pursuant to Section 8 of the U.S. Department of Agriculture Housing Program. App. 4. Although Petitioners' claim that the African-Americans residing in Eva Sardonell's house were "the only African-Americans residing in the street," other African-American families lived in the neighborhood. Murphy depo., p. 19, lines 10-13; Sitherwood depo., p. 14,

lines 8-10. Indeed, as documented in the Year 2000 U.S. Census data for the City of Powder Springs, Georgia, one-third of the City's population is African-American. App. 64-69.

Petitioners argue that the City investigated and enforced violations of its Home Occupations Ordinance only because Eva Sardonell rented the 3890 house to African-Americans. Despite Petitioners' histrionics, Petitioners have proven no nexus between Respondents' enforcement of the Home Occupation Ordinance at the 3891 house and the renting of the 3890 house. The 3890 house and the 3891 house are individually owned by Eva and Douglas Sardonell. The uses of the two houses are separate. No nexus or connection between the two houses has been alleged or proven. No nexus or connection between Respondents' actions and the 3890 house exists. No action taken by Respondents affected the 3890 house, Eva Sardonell's ownership of the 3890 house or her relation with her tenants. Petitioners have presented no nexus to establish the alleged violation of federal law and Respondents' actions. Petitioners have misrepresented the facts to this Court.

B. The Petition misrepresents the Question of Law before this Court.

Petitioners' Question Presented is, "Whether white citizens who are discriminated against by government officials for renting property to black citizens, thereby have a cause of action under 42 U.S.C. § 1982." Petitioners misrepresent the question of law to this Court. Despite Petitioners' arguments to the contrary, 42 U.S.C. § 1982 has been broadly construed to provide standing to any

citizen regardless of race when that citizen experiences an interference with one of the bundle of sticks inherent in real property rights.[3] *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). The nexus or connection between the ownership interest and the violation of a real property right is the basis for standing in a 42 U.S.C. § 1982 case. All cases relied upon by Petitioners are based upon that nexus.

In the present case, there is no nexus or connection between Petitioners' allegations and Respondents' actions. All actions taken by Respondents were in the enforcement of the City's Home Occupation Ordinance at the 3891 house. All of Petitioners' allegations are based upon activity at the 3891 house, the house owned by Douglas Sardonell, the house from which Mr. Sardonell runs his business. App. 1-10. Eva Sardonell has no ownership interest in the 3891 house.

Eva Sardonell is the sole owner of the 3890 rental house. None of Petitioners' allegations refer to any action concerning the 3890 house. The complaints and voluminous pleadings filed in this case are silent as to any retaliatory action against the 3890 house or to its renters. App. 70-88.

White citizens are consistently granted standing in an action under 42 U.S.C. § 1982. Race is not an issue. Petitioners have misstated the question of law before the Court. Petitioners are suggesting that the Court find

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[3] 42 U.S.C. §1982 states "all citizens of the United States shall have the same right in every state or territory as enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

standing under 42 U.S.C. § 1982 for a case where no nexus exists between an ownership interest in real property and an interference with that property right. Petitioners' actual question is outside existing law. There is no nexus between Respondents' actions and the 3890 rental house. The question as presented is a blatant misstatement of law.

C. The Petition misstates the basis for the U.S. District Court for the Northern District of Georgia's, Atlanta Division, dismissal of Petitioners' 42 U.S.C. § 1982 allegation.

Despite Petitioners' allegations to the contrary, the District Court did not rely upon the issue of standing in addressing Petitioners' § 1982 claim. The District Court's order was silent as to standing. District Court Judge Carnes made two references to standing. Those references were to standing under the Fair Housing Act and 42 U.S.C. § 1981 and were not dispositive of the dismissal of the claims.[4]

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[4] As to standing under the Fair Housing Act, the Court states: "Indeed, Plaintiffs fail to allege any impact on the rental of their home to the African-American family, and it would seem that Plaintiffs lack any standing to bring an FHA claim." Pet. App. 22.

As to their 42 U.S.C. § 1981 claim, District Court Judge Carnes states, "Plaintiffs, however, do not appear to be alleging that they were discriminated against because they were white, but rather, because they entered into a contract with a black person. Plaintiffs have not cited any case law allowing this sort of 'association' claim under § 1981. Furthermore, while there are circumstances where a plaintiff may have standing to assert a claim on behalf of a third party, plaintiffs have not alleged that this is what they are doing, nor do the facts indicate that third-party standing would be appropriate in this case.

(Continued on following page)

Despite Petitioners' allegations to the contrary, the "single unified theme" in the District Court's order is not a lack of standing. The "single unified theme" is Petitioners' continuous failure to substantiate their unfounded claims.

Petitioners have taken the District Court's order completely out of context. Judge Carnes did not dismiss Petitioners' 42 U.S.C. § 1982 claim because Petitioners were white. Judge Carnes' order stated,

> Plaintiffs' fourth claim alleges a violation of 42 U.S.C. 1982. Section 1982 provides: 'All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey [sic] real and personal property.' Again, as with the claims discussed above, plaintiffs have failed to describe the legal underpinnings of their claim, and plaintiffs' situation would not appear to fit within the scope of a § 1982 claim. In a typical § 1982 claim, a plaintiff must show: (1) that he is a member of a racial minority; (2) that he applied for and was qualified to rent or purchase certain property or housing; (3) that he was rejected; and (4) that the housing or rental opportunity remained available thereafter. *Bell v. Mike Ford Realty Co.,* 857 F. Supp. 1550 (S.D.Ala. 1994). Plaintiffs' claim simply does not fit this framework, and plaintiffs

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More importantly perhaps, plaintiffs have not asserted that defendants interfered with their ability to 'make and enforce contracts.' None of the defendants' actions related to the agreement between [Eva] Sardonell and the tenants, and there is no indication that the rental agreement was impacted in any way by defendants' alleged actions. Accordingly, defendants' motion for summary judgment is granted as to plaintiffs' § 1981 claim." Pet.App. 30-31.

> have provided the Court with no further explanation of why they feel they have a cognizable § 1982 claim. Accordingly, plaintiffs' § 1982 claim fails as a matter of law.

Pet.App. 31-32.

The question of standing for a white person under 42 U.S.C. § 1982 was irrelevant to Judge Carnes: "Petitioners [had not] provided the court with any explanation of why they felt they had a cognizable § 1982 claim. As such their argument failed."[5]

Petitioners were not denied standing. They failed to state and prove a claim under 42 U.S.C. § 1982. Petitioners claim that they were denied standing is patently untrue.

D. The Eleventh Circuit Court of Appeals' ruling does not conflict with *Sullivan v. Little Hunting Park, Inc.*

Petitioners allege that the Eleventh Circuit Court's decision conflicts with *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969). Petitioners argue that the Eleventh Circuit Court of Appeals order is in conflict with the right of white citizens to have standing under 42 U.S.C. § 1982.

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[5] See also Judge Carnes' order, Pet.App. 32-34, concerning the dismissal of Petitioners' § 1985 cause of action: "As with their other claims, plaintiffs have done nothing more than repeat the facts with no explanation of their legal significance. Plaintiffs have not alleged that they were a member of a class discriminated against and have not alleged a conspiracy with specificity. Accordingly, plaintiffs' § 1985 claim fails as well."

As argued throughout this brief, the issue of standing to white citizens under 42 U.S.C. § 1982 is not at issue. Further, the Eleventh Circuit Court of Appeals did not deny Petitioners standing under 42 U.S.C. § 1982.

In its order the Eleventh Circuit Court relied not upon the issue of standing, but upon the lack of connection or nexus between the alleged acts and the violation of the law. The Eleventh Circuit Court stated, "The basis of the [district court] order is that *there was no connection between the alleged acts and a violation of the Fair Housing Act or 42 U.S.C. §§ 1981, 1982, 1983 and 1985*. Plaintiff's appeal. We affirm." Pet.App. 3. [emphasis added].

The Eleventh Circuit Court's holding in the present case is directly in line with *Sullivan v. Little Hunting Park, Inc.* Little Hunting Park, Inc. is a corporation chartered to operate a community swimming pool. Sullivan, a white property owner, sold his house to an African-American. As part of the transaction, Sullivan assigned his membership share for use of the community swimming pool to his purchaser. Little Hunting Park, Inc. refused to approve the assignment of the membership share because the assignee was an African-American. Sullivan brought suit. This Court held that the refusal to approve the assignment of the share interest was an interference with a right to lease and in violation of 42 U.S.C. § 1982.

The fact that Sullivan, a white male, was granted standing was not the dispositive issue in the *Sullivan* case. The dispositive factor in *Sullivan* as well as in all other cases cited by Petitioners is the nexus between the named plaintiff and the affected property right. No reported case holds or suggests that a cause of action under 42 U.S.C. § 1982 exists when there is no nexus between

the owner of property and an alleged harm to his/her property right.

In *Sullivan* Mr. Sullivan was denied one of his real property rights when the assignment of the lease was denied. He had standing to bring a 42 U.S.C. § 1982 case.

Barrows v. Jackson, 346 U.S. 249 (1953), the second case cited by Petitioners, involves interference with a real property right. In *Barrows*, petitioner, a white woman, was subject to an $11,600.00 fine for breeching a restrictive covenant forbidding the sale of realty to non-Caucasians. Petitioner was granted standing because an $11,600.00 judgment could be levied against her for violation of the covenant. Petitioner could thus suffer financial injury. Petitioner's potential injury was based upon her ownership of real property. The nexus for standing under 42 U.S.C. § 1982 existed because of interference with one of petitioner's property rights. Petitioner's race was irrelevant.

All other cases cited by Petitioners contain a similar real property nexus. [*Cutting v. Muzzey*, 724 F.2d 259 (1st Cir. 1984), subdivision developer/owner found to have standing because racial animus demonstrated by "outrageous development requirement imposed"; *Dale v. City of Chicago,* 672 F. Supp. 330 (N.D. Ill. 1987), landlords/owners had cause of action against city officials alleging that city officials punished them for renting their property to black tenants causing them to lose federal funding; *Des Vergnes v. Seekonk Water District,* 601 F.2d 9 (1st Cir. 1979), low income housing developer/owner had cause of action alleging that water district's denial of developer's permit discriminated against housing to be built for low income and black persons; *Pisello v. Town of*

Brookhaven, 933 F. Supp. 202 (E.D.N.Y. 1996), property management company which provided housing to low income minorities had cause of action against the town of Brookhaven for allegedly refusing to issue permits for the company's office space and for closing the company's offices without notice.] In each of the above noted cases, the named parties owned the property in question. The question of race was irrelevant. Standing was granted because a nexus or connection existed between an ownership interest in property and a discriminatory interference with a property right.

This Court, in *Warth v. Seldin,* 422 U.S. 490, 95 S. Ct. 2197 (1975), defined the parameters for standing.

> The question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal court jurisdiction and prudential limitation on its exercise. [citations omitted]. In both dimensions it is founded in concern about the proper and properly limited role of the courts in the democratic society. [citations omitted].

Id. at 498.

This Court continues,

> In its constitutional dimension standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Article III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the

> controversy' as to warrant his invocation of federal court jurisdiction and to justify an exercise of the court's remedial powers on his behalf . . . A federal court's jurisdiction, therefore, can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action.'

Id. at 500.

Although the *Warth* court notes that a person may invoke the rights of others, the court states, "Even when the plaintiff has alleged injury sufficient to meet the case or controversy requirement, this court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Id.* at 500.

The *Warth* court completes its analysis by noting that "a plaintiff's right to standing must remain based upon a distinct and palpable injury to himself." *Id.* at 501.

There are no further parameters for standing in a 42 U.S.C. § 1982 case. Standing must be based upon a distinct and palpable injury to an individual. The following cases demonstrate the limitations of these parameters.

In *Inland Mediation Board v. City of Pomona,* 158 F. Supp. 2d 1120 (2001), an African-American plaintiff alleged that she had heard the director of a city landlord association state that he would not rent to African-Americans. The Director encouraged other landlords to not rent to African-Americans also. After hearing the remarks, the plaintiff became afraid to live in the city and brought a 42 U.S.C. § 1982 suit. In disallowing the claim the court stated,

> § 1982 must be construed broadly, however, [that] does not affect the rule that the 'property rights' protected under § 1982 are those included in the 'bundle of rights' for which an individual pays when he or she leases a piece of property (quoting *Bradley v. Carydale Enterprises,* 730 F. Supp. 709, 717 (E.D.Va. 1989) (citing to *Tillman v. Wheaton-Haven Recreation Assn.,* 410 U.S. 431, 437, 93 S. Ct. 1090, 35 L.Ed.2d 403 (1973)).

Id. at 1155.

> . . . the present case is clearly distinguishable from cases in which § 1982 claims were upheld against third parties because they directly and/or physically interfered with the plaintiff's exercise of their property rights. See *e.g. Sullivan v. Little Hunting Park, Inc.,* 396 U.S. 229 (1969) . . . . the discriminatory comments, while potentially unlawful, . . . did not rob plaintiff . . . of one of the property rights for which she bargained when she entered into her lease agreement. Accordingly, summary adjudication in favor of defendants in plaintiff's § 1982 claim is hereby granted.

Id. at 1155.

In another analogous case, *Graves v. Van Buskirk,* 1991 WL 21545 (Ohio App. 9 Dist.), plaintiff, an African-American, brought suit against defendants alleging that defendants' children had harassed plaintiff and vandalized his home. The court, in finding that a 42 U.S.C. § 1982 cause of action was not supportable, stated,

> The broad sweeping language of § 1982 must not be construed too narrowly. (*Sullivan,* at 237). On

> the other hand, the statute is not a comprehensive open housing law. (*Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968)). Section 1982 generally prohibits 'discrimination in the sale or rental or real or personal property.' (*Patterson v. McClean Credit Union*, 491 U.S. 164 (1989)). Its primary focus is on transactions in property. (*Abel v. Bonfanti*, 625 F. Supp. 263 (S.D.N.Y. 1985)).
>
> The Graves contend that the Van Buskirk children contravened their rights to 'lease' and 'hold' property under § 1982. The Van Buskirks were not the Graves' landlords but merely neighboring leaseholders. The Graves do not cite, and we are unable to locate, any prior cases applying § 1982 in this non-transactional manner . . .
>
> The U.S. Supreme Court has held that interference with a leasehold may violate § 1982. (*Sullivan*, at 237) . . . . The facts we confront present an entirely different situation . . .
>
> Our attention has been directed to *Stackhouse v. DeSitter*, 566 F. Supp. 865 (N.D.Ill. 1983), reconsidered in part (1985) 620 F. Supp. 208, which displays similarities to the instant case . . . In reconsidering its original decision refusing to apply § 1982 the [*Stackhouse*] court held that § 1982 simply does not extend to 'every act of racial discrimination that is somehow related to housing.' We agree.

Id. at 2154.

The *Inland Mediation Board* and *Graves* cases are clearly analogous to the facts in the present case. There is no effect upon the leasing or ownership of property.

In *City of Memphis v. Greene,* 451 U.S. 100, 101 S. Ct. 1584 (1981), this Court held that the city's closing of a street, causing black residents to use an alternative street, did not violate 42 U.S.C. § 1982. In so holding, the Court stated,

> The street closing did not violate § 1982. The evidence failed to show that the street closing would prevent blacks from exercising the same property rights as whites, [or] that it depreciated the value of blacks' property, or that it severely restricted access to blacks' homes. Rather, the record disclosed that respondents' only injury is the requirement that one street rather than another must be used for certain trips within the city. Such an injury does not involve any impairment to the kind of property rights identified as being within the reach of § 1982.

Id. at 101. See also *Westray v. The Porthole, Inc.,* 586 F. Supp. 834 (1984), involving standing under 42 U.S.C. § 1981.

The seminal issue in granting standing under 42 U.S.C. § 1982 is an interference with a real property right. In the present case none of the actions Petitioners allege Respondents have taken have affected Eva Sardonell's property rights. As such, Petitioners' arguments fail.

Petitioners blatantly misstate the Eleventh Circuit Court of Appeals' ruling. Petitioners state, "The Eleventh Circuit lets stand without even a comment the District Court's conclusion that Petitioners as white citizens were without standing." Pet. 18.

In actuality, the Eleventh Circuit Court stated,

> Defendants moved for summary judgment. The [district] court considered the arguments. It [the district court] entered a carefully drawn order of 37 pages granting Defendants' motion. *The basis of the order is that there was no connection between the alleged acts and a violation of the Fair Housing Act, or 42 U.S.C. §§ 1981, 1982, 1983 and 1985.* Plaintiffs appeal. We affirm.

Pet.App. 2-3. (emphasis added).

The Eleventh Circuit Court affirmed the District Court's order finding "no connection between the alleged acts and the violation of the cited laws." Standing was not an issue before the court. The nexus between the alleged actions of Respondents/Defendants and the cited Civil Rights Acts was the issue. Both the District Court and the Eleventh Circuit Court found no connection between Petitioners' allegations and the applicable law. Respondents'/Defendants' motion for summary judgment was granted. To state to this Court that the District Court and the Eleventh Circuit Court of Appeals did not fully consider the issues before them is erroneous. Both the District Court and the Eleventh Circuit Court of Appeals upheld law clearly established by this Court. To now intimate to this Court that the Eleventh Circuit's decision conflicts with *Sullivan v. Little Hunting Park, Inc.* is erroneous. Petitioners' writ should be summarily dismissed and all costs cast on the Petitioners.

E. Neither the record nor the decisions below raise the Question Presented by the Petition.

The Question Presented by Petitioners has not been previously argued in this case. Petitioners argue that the District Court denied them standing under 42 U.S.C. § 1982 because they are white citizens. Petitioners further state that the Eleventh Circuit Court of Appeals affirmed this denial of standing. Pet. 3 and 17. As argued throughout this brief, the District Court did not address standing in its grant of summary judgment to Respondents under 42 U.S.C. § 1982.

Petitioners' question presented has not been previously argued in this case and is outside the scope of appeal.

F. The Petition misstates the legal standard for summary judgment.

Summary judgment is appropriate when there is no genuine issue as to any material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986) at 322-23 (quoting F.R.C.P. 56(c)).

In a motion for summary judgment, the movant bears the initial responsibility of asserting the basis for his motion. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986) at 323. However, the movant is not required to negate his opponent's claim. The movant may discharge his burden by merely "'showing' – that is, pointing out to the District Court – that there is an absence of evidence to support the non-moving party's case." *Id.* at 325. After the movant has carried his burden, the non-moving party is then required to "go beyond the pleading" and present competent

evidence designating "specific facts showing that there is a genuine issue for trial." *Id.* at 324. F.R.C.P. 56(e) requires that an adverse party attempting to overcome a motion for summary judgment to " . . . not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, *Samples v. City of Atlanta,* 846 F.2d 1328, 1330 (11th Cir. 1988), "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) at 247-48 (1986).

In the present case Petitioners did not meet their burden of proof. They did not go beyond their pleading. No evidence was presented showing more than an alleged factual dispute. There was no genuine issue of material facts. Petitioners here, just as in the courts below, simply reiterate the factual allegations set forth in their complaint. Petitioners offered no proof that such facts were true or material. As stated in *Celotex,* if the non-movant fails to introduce significant credible evidence sufficient to show that a reasonable jury could find for the non-movant, the movant is entitled to summary judgment; the non-movant has failed to "make a sufficient showing on an essential of their case with respect to which they have the burden of proof." *Celotex* at 323.

In addition, the local rules of the Northern District, Atlanta Division require the nonmovant of a motion for summary judgment to respond to each of the movant's numbered material facts. The rules state, "All material facts contained in the moving party's statement which are not specifically controverted by the respondent's statement should be deemed admitted." LR 56.1.B.(2), NDGa. Rather than comply with this rule, Petitioners, in response to Respondents' motion for summary judgment, filed their own statement of material facts, which made no reference to Respondents' statement of material facts. While the District Court could have deemed all of Respondents' facts admitted, the Court attempted "to discern" which facts Petitioners intended to deny. Facts to which Petitioners made no response, however, were deemed admitted. (Pet.App. 6, footnote). Despite this generous assistance from the Court, Petitioners failed to state material facts necessary to overcome Respondents' motion for summary judgment.

When reviewing a grant of summary judgment, a circuit court may affirm the grant of summary judgment if there exists any adequate ground for doing so, regardless of whether that ground was one of the rationale on which the District Court relied. *Fitzpatrick v. City of Atlanta*, 2 F.3d 112, 117 (11th Cir. 1993). In the present case, Petitioners never went beyond their initial pleading. Further, the District Court's generous reading of Petitioners' statement of facts clearly provided adequate rationale for the affirmance of the grant of summary judgment.

G. The Petition misstates the viability of the defenses of qualified immunity, legislative immunity and sovereign immunity.

Petitioners argue in a lengthy footnote that the District Court incorrectly

> suggested that the individual respondents were entitled to qualified immunity . . . the District Court further suggested that Respondent Noriega was entitled to legislative immunity . . . the District Court suggested that Petitioners could *not* establish municipal liability against respondents under *Monell v. Dept. of Social Services,* 436 U.S. 658 (1978) . . .

Pet. 24, footnote 4.

As Petitioners noted, the District Court never reached the three immunity issues. The District Court stated, "Having found that Plaintiffs failed to establish that they were denied a federal right, the Court need not reach any of these [immunity] issues. *It notes, however, that all these defenses appear to be sound.*" Pet.App. 29, footnote 13. (emphasis added).

District Court Judge Carnes found it unnecessary to reach the immunity issues because of Petitioners' failure to allege and prove a cause of action. Petitioners failed to establish the violation of federal right. Despite Petitioners' arguments to the contrary, the District Court is again correct. The issues of sovereign, legislative, and qualified immunity remain viable. If the case were to be remanded, the issues of sovereign, legislative and qualified immunity must be decided by the District Court.

SUMMARY AND CONCLUSION

Petitioners have blatantly misrepresented the question of law before this Court. All citizens, regardless of race, have standing under 42 U.S.C. § 1982. The question of race is irrelevant. The controlling issue in granting standing under 42 U.S.C. § 1982 is the existence of a nexus or connection between an ownership interest in property and a violation of or discriminatory interference with that property right. No such nexus exists in the present case.

Petitioners have also misrepresented the decision of the U.S. District Court and the Eleventh Circuit Court of Appeals. Neither the District Court nor the Circuit Court of Appeals relied upon the issue of standing in denying Petitioners' claims. The District Court instead noted that, "Petitioners had not provided the court with any explanation of why they felt they had a cognizable 42 U.S.C. § 1982 claim." Pet.App. 32-34. Petitioners made no connection between the acts they alleged and a violation of the law. Their arguments failed. The Eleventh Circuit Court of Appeals upheld the District Court ruling. The decisions of both courts conform to *Sullivan v. Little Hunting Park, Inc.*

The standing argument now presented to this Court was never addressed by the District Court or the Court of

Appeals. Petitioners' writ of certiorari should be dismissed and all costs cast upon the Petitioners.

Respectfully submitted,

CARYL SUMNER BLACK
(neé Caryl Brinson Sumner)
CARYL SUMNER BLACK, P.C.
5015 Oak Bluff Court
Atlanta, Georgia 30350
(770) 390-0101

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs vs. GARY NORIEGA, individually, and as Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer and the CITY OF POWDER SPRINGS Defendants.	CIVIL ACTION FILE NO. 1:99-cv-1921

COMPLAINT

(Filed Jul. 27, 1999)

NOW INTO COURT, comes and appear Plaintiffs, EVA CHARLENE SARDONNELL and DOUGLAS SARDONELL, through undersigned counsel, George Melville Johnson & Associates, P.C. who hereby file this complaint for damages and declaratory relief against the above named defendants as follows:

I. PRELIMINARY STATEMENT

1.

Plaintiffs bring this action pursuant to the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*

(hereinafter referred to as the "Fair Housing Act"), 42 U.S.C. §§ 1981, 1982, 1983, and 1985.

II. PARTIES

2.

Plaintiffs are husband wife, are white citizens of the United States and residents of Cobb County, Georgia.

3.

Defendant, City of Powder Springs, is a municipality and political subdivision of the State of Georgia, which may be served through its City Manager, Wayne Wright, at 4488 Pineview Drive, Powder Springs, Georgia 30127 Gary Norega, is a member of the City Council for the City of Powder Springs and may be served at the same address through such City Manager. Wayne Wright is the City Manager and may be served accordingly. Richard Sailors is the mayor for the city of Powder Springs and may be served through the City Manager at the above referenced address, and Vince BLACKMON is the Code Compliance Officer for the City of Powder Springs and may be served at the same address through the City Manager.

III. JURISDICTION AND VENUE

4.

This action involves the constitutional right to due process and equal protection under the Fourteenth Amendment to the United States Constitution. It also arises out of the procedural and statutory rights and obligations secured and established by Title VII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq., and 42 U.S.C. §§ 1981, 1982, 1983, and 1985.

5.

Jurisdiction of this Court is invoked pursuant to 28 USC 1331 and 1343(a)(3) and 1343(a)(4). The amount in controversy, exclusive of interest and costs, is in excess of $75,000.00. Declaratory relief is sought pursuant to 28 USC §§ 2201 and 2202. All of the acts, omissions, and events complained of herein took place in Cobb County, Georgia and venue is, therefore, proper in the Middle District for the United States District Court in Georgia.

IV. FACTUAL ALLEGATIONS

6.

Plaintiffs are white citizens of the United States residing in Powder Springs, Georgia. Doug Sardenell [sic] owns a home located at 3891 Blythewood Circle, Powder Springs, Georgia, and plaintiff, E. Charlene Sardonell owns a home located at 3890 Blythewood Circle, Powder Springs, Georgia.

7.

For the reasons set forth hereinafter, plaintiffs have, since September of 1998, suffered the deprivation of their constitutional rights to due process and to equal protection under the law.

8.

Additionally, plaintiffs have been harassed and subjected to arbitrary and unfounded charges filed against them by the City of Powder Springs, through Vince BLACKMON and pursuant to directions from Wayne Wright and Richard Sailors.

9.

Since October of 1995, Douglas Sardonell has been in possession of a Home Based Operations License issued by the City of Powder Springs and, up until September of 1998, Sardonell was able to operate a business out of his residence without interference from the defendants.

10.

In September, 1998, plaintiff E. Charlene Sardonell rented her residence to non-white citizens of the United States pursuant to Section 8 of the United States Department of Agriculture Housing Program.

11.

Prior to the effective date of the tenancy of these non-white lessess [sic], the neighbor of the plaintiffs and the mother-in-law of defendant, Gary Noriega, approached E. Charlene Sardonell and requested that she refrain for

renting her residence to any non white individuals and further stated that she could assist her in finding legal mechanisms to avoid renting to any such individuals.

12.

Upon Plaintiffs' information and belief, defendant Gary Noriega, acting under color of state law, conspired to harass and intimidate Plaintiffs into terminating their rental relationship with their non-white tenants by suddenly and without provocation or a sound basis, causing the arbitrary investigation, charging, and prosecution [sic] the plaintiff for violations of the City's zoning ordinances.

13.

Upon plaintiffs' information and belief, decedents, Wayne Wright and Richard Sailors acted under color of state law, and in concert and conspiracy with Gary Noriega in subjecting the plaintiffs to on site inspections and warnings given by City Code officials for alleged and unfounded city code violations beginning in November of 1998.

14.

Plaintiffs continued to be harassed by the unfounded and selective enforcement of officials with the City of Powder Springs by virtue of a letter issued by the City on January 25, 1999, wherein the City accused the plaintiffs of violating Doug-Sardonell's Customary Home Occupation License by the parking of their vehicles at his residence and by virtue of numerous deliveries to the residence.

15.

Plaintiffs assert that no such numerous deliveries had taken place, that no more vehicles were parked at their residence than in prior years, and that the City's sudden attempts to enforce the City's zoning code came at the direction of Defendants, Gary Noriega, Wayne Wright, and Richard Sailors, in an attempt to intimidate and harass the Plaintiffs as a result of their exercise of their home to any individual without regard to race.

16.

As a continuation of such pattern of the Defendants' intimidation, coercion, and harassment, plaintiffs were subjected to another inspection by a city zoning commission member, who stated that he did not see any code violations at their residence.

17.

As yet another part of the continuation of the defendants intimidation, coercion, and harassment of the plaintiffs, several City Council members stated in the March, 1999 City Council Meeting that the Plaintiffs' nephew could not visit their home if he drove a vehicle owned by Doug Sardonell.

18.

As still further continuation of the Defendants' acts of intimation, coercion, and harassment of the Plaintiffs, on April 16, 1999, E. Charlene Sardonell was issued a citation for violation of the City's zoning ordinances.

19.

Plaintiffs show further that they applied for a land use permit to avoid being cited for any zoning violations prior to such citation being issued and that the City of Powder Springs, in violation of their right to due process and equal protections of the law, failed to act on such permit application in violation of city Ordinances.

COUNT I

FAIR HOUSING ACT CLAIM

20.

All of the allegations contained in this Complaint and in paragraphs 1 through 19 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

21.

The conduct of the Defendants constitute [sic] a violation of the [sic] 42 U.S.C. § 3604 in that defendants acted in concert and under color of state law to conspire to deny the plaintiffs the right to rent their residence to individuals without regard to race.

COUNT II

42 U.S.C. § 1983 CLAIM

22.

All of the allegations contained in this Complaint and in paragraphs 1 through 21 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

23.

The conduct of the defendants are actionable under 42 USC § 1983 as a violation of the Plaintiffs' right to equal protection under the laws and substantive due process, as well as their right not to be deprived of property rights without procedural due process of law.

COUNT III

42 USC § 1981 CLAIM

24.

All of the allegations contained in this Complaint and in paragraphs 1 through 23 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

25.

The conduct of the defendants are actionable under 42 USC § 1981 as a violation of the plaintiffs' right to equal protection under the laws and their right to make and enforce contracts without regard to race.

COUNT IV

42 U.S.C. § 1982

26.

All of the allegations contained in this Complaint and in paragraphs 1 through 25 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

27.

The conduct of the defendants are actionable under 42 U.S.C. § 1982 as a violation of the plaintiffs' rights to equal protection under the laws and their right to buy, sell, or lease property without regard to race.

COUNT V

42 U.S.C. § 1985

28.

All of the allegations contained in this Complaint and in paragraphs 1 through 27 are made a part hereto by reference and incorporated herein, as if fully set forth herein.

29.

The conduct of the defendants in conspiring to deprive the plaintiffs of their constitutional rights to equal protection and due process of law constitute a violation of the plaintiffs' rights in violation of 42 USC § 1985.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following:

1. Declare that the actions of the defendants are unconstitutional and contrary to the laws of the United States of America;

2. Enjoin defendant, the City of Powder Springs, its officials, and employees and agents from exercising its police powers in such a way as to discriminate on the basis of race and that violate the plaintiffs' right to due process and equal protection of law;

3. General damages of $500,000.00;

4. Punitive damages of $500,000.00;

5. Attorneys fees and costs;

6. Trial by jury; and

7. Such other just and equitable relief as may be necessary Respectfully submitted this 23rd day of July 1999.

GEORGE MELVILLE JOHNSON
AND ASSOCIATES, P.C.
/s/ George Melville Johnson
George Melville Johnson
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs, v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC App 2 March Minutes

THIRD AFFIDAVIT OF BETTY BRADY

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Betty Brady, who, being duly sworn, deposes and states as follows:

1.

My name is Betty Brady. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as City Clerk for the City of Powder Springs. In that capacity, I am responsible for keeping the official records for the City.

3.

I take the minutes for the City Council meetings.

4.

The attached copy of the minutes of the Powder Springs City Council Meeting of March 1, 1999 is a true and accurate copy of the original which is maintained as an official record of the City.

5.

Further Affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

Sworn to before me this
8th day of December, 2000.

/s/ Catherine Raper
Notary Public

Notary Public, Paulding
County, Georgia
My Commission Expires
Jan. 29, 2001

REGULAR CITY COUNCIL MEETING
CITY OF POWDER SPRINGS
MARCH 1, 1999

Mayor Sailors called the meeting to order at 7:00 PM. All members of Council were present. Also present were City Attorney Dale Bandy, City Manager Wayne Wright, and City Clerk Betty Brady.

Invocation: Wayne Wright. The Pledge of Allegiance to the Flag was led by Mayor Sailors.

The February 15, 1999 regular City Council meeting minutes were approved as presented.

MAYOR'S COMMENTS:

- Stated he and Councilman Gary Noriega attended a cluster meeting with various area school principals on Tuesday, February 23. The meeting was concerning transition of students to middle schools and high schools.
- Presented, to Lloyd Cargal, Director of Finance, a check in the amount of $126,129.17, for franchise fees, and a check in the amount of $6,126.34, for property tax, to the city of Powder Springs from Georgia Power.
- Recognized Bobby C. Elliott, Public Works Director, for 25 years of service with the City of Powder Springs. Bobby began work with the city on 2/21/74 as a part time employee and became fulltime on 3/1/74. Bobby became Public Works Director on 1/28/75. Mayor Sailors read a letter from Governor Roy E. Barnes, commending Bobby for his years of service with the City. Mayor Salors presented Bobby with a plaque and with the assistance of Council

Members Sid Baxter, George Ford, Brad Hulsey, Gary Noriega, and Pat Vaughn, presented Bobby with a 31" television. Following the gift presentation, a reception was given in Bobby's honor.

CITIZEN'S COMMENTS:

Judith Skelton, 3200 Dogwood Drive, was present and stated her concerns about the trees planted in the buffer for the Eckerd Drug Store that have died. She also stated that there is a water problem in her yard. She stated she believes it is coming from the vacant lot that belongs to the City. Ms. Skelton also stated her concerns about the lighting on the Eckerd Drug Store. Although some modifications were made, the lights are still too bright.

Brad Hulsey stated he has received complaints from the Spring Crossing Homeowners Association about the lighting at the Eckerd Drug Store.

Mayor Sailors stated a letter will be sent to Venture about the lighting on the store needs to be changed and also to inform them that the time to plant the trees has ended.

CITY ATTORNEY:

Dale Bandy presented a Land Use Permit application, and opened the public hearing, for Douglas Sardonell, 3891 Blythewood Circle, for the purpose of the home occupation business, "A Cool Flame Heating and Air, Inc." The permit would be to allow continuation of an existing home business. Mr. and Mrs. Sardonell were present and stated that their business will be moving to a commercial location on April 1, 1999. The Planning Commission voted 3 for the application and 3 against approval of the application. No

one signed up to speak concerning the application. There were three neighbors present in favor of the application. The public hearing was closed.

GARY NORIEGA moved to continue the application until the first meeting in April. This would also allow Mr. Sardonell to have the two vans on his property until the first meeting in April. *GEORGE FORD* seconded. The voted was 5 to 0 to table until the first meeting in April.

Dale Bandy presented a Rezoning application, and opened the public hearing, for G W Investments, for property located near Florence Road and Lawler Drive. The request is to obtain a CRC (Community Retail Commercial) zoning, from LI (Light Industrial) for the purpose of a restaurant, retail, or banking facility. No one signed up to speak concerning the application. The Planning Commission recommended approval. Mr. Lynn Wilson was present to speak for the application. Mr. Wilson stated that he plans a strip shopping area on the property. *BRAD HULSEY* moved to approve. *SID BAXTER* seconded. *APPROVED 5 TO 0.*

Dale Bandy stated the Option Agreement and Natural Resource Conservation Easement (Resolution 99-3) between the City of Powder Springs and Wetlands Environmental Technologies is not completely ready for review and cannot be voted on tonight.

Dale Bandy stated the agreement for solid waste disposal services between the City of Powder Springs and Cobb County (Bedminster Contract) (Resolution 99-4) has not been completely negotiated and cannot be voted on tonight.

Dale Bandy presented the second reading of *ORDINANCE 99-1*, to amend FY 1998-99 Budget. *GEORGE FORD* moved to approve. *SID BAXTER* seconded. *APPROVED 5 TO 0.*

COUNCIL REPORTS:

Gary Noriega congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs. He also commented on the cluster meeting with area school principals last Tuesday, February 23.

Pat Vaughn congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs and stated that it has been a pleasure to work with him the past five years. Mrs. Vaughn also commended Bobby for being on the Dean's list while at Southern Tech.

George Ford congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs.

Brad Hulsey congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs. Mr. Hulsey also extended congratulations to Robin, Bobby's wife.

Mr. Hulsey announced the McEachern High School football team, cheerleaders, and the band will attend the March 15 council meeting.

Mr. Hulsey moved to re-appoint Steve Thomas and Rick Gravitt to the Planning & Zoning Commission, term to expire 3/16/01. *GEORGE FORD* seconded. *APPROVED 5 TO 0.*

Sid Baxter congratulated Bobby Elliott for his 25 years of service with the City of Powder Springs. Mr. Baxter also

announced the Keep Powder Springs Beautiful Committee will meet Saturday, March 13 at the Ford Center to move shrubbery and asked for anyone wishing to help to meet them there.

Wayne Wright, City Manager, extended his congratulations to Bobby Elliott and stated his administration to him for not being afraid to tackle any task.

Betty Brady, City Clerk, extended her congratulations to Bobby Elliott.

Rick Richardson, Chief of Police, extended his congratulations to Bobby Elliott.

Lloyd Cargal, Director of Finance, extended his congratulations to Bobby Elliott.

The meeting adjourned at 8:40 PM.

/s/ Betty G. Brady
Betty G. Brady
City Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL,	]
Plaintiffs	] CIVIL ACTION FILE] NO. 1:99-CV-1921-JEC
v.	]
GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS,	]]]]]]]]]]]]
Defendants.	]

AFFIDAVIT OF BETTY BRADY

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Betty Brady, who, being duly sworn, deposes and states as follows:

1.

My name is Betty Brady. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as City Clerk for the City of Powder Springs. In that capacity, I am responsible for keeping the official records for the City.

3.

I take the minutes for the City Council meetings.

4.

I keep the official audio tapes of the City Council meetings.

5.

I listened to that portion of the audio tape of the March 1, 1999 City Council meeting dealing with the issues involved in the above referenced case. I completed a transcription of that portion of the tape. A copy of my transcription is attached as Exhibit A to this Affidavit.

6.

To the best of my knowledge, the transcription attached hereto as Exhibit A is true and correct.

7.

I have also attached to this Affidavit the audio tape from which I made this transcription.

8.

Further Affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

Sworn to before me this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

/s/ Catherine Raper
NOTARY PUBLIC

Notary Public, Paulding
County, Georgia
My Commission Expires
Jan. 29, 2001

EXHIBIT A

TRANSCRIPTION FROM CITY OF POWDER SPRINGS CITY COUNCIL MEETING 3/1/99 CASSETTE TAPE

MS. BANDY: The first item on our agenda is the public hearing for land use permit application of Mr. Douglas Sardonell, 3891 Blythewood Circle has requested a land use permit to operate heating and air-conditioning office, I believe, from the home. Come forward please.

MS. SARDONELL: To start with, we don [sic] still need a temporary land use permit. We have located and will be moving into a commercial place April first. It should be ready, but again we still need a land use permit until that time. And it's going to be at 4018 Lindley Road, Powder Springs, Georgia, Suite B.

And then that's going to bring up another issue because when we move I need to know what to do about our business license. As

MAYOR SAILORS: Let me ask you this, Ms. Sardonell, am I hearing you say that you are withdrawing or want to withdraw your application.

MS. SARDONELL: No sir, I'm not withdrawing because even though we are moving to a commercial location, we can't do that until April first, and we really don't need to [sic] getting letters and phone calls for the next thirty days.

COUNCIL MEMBER GEORGE FORD: We could postpone this for thirty days.

MR. SARDONELL: No, we want the harassment stopped because we have been harassed with deliveries which we have proven here that we do not get the deliveries in excess. There's somebody in the neightorhood [sic] that is –

MS. SARDONELL: We obviously bother.

MR. SARDONELL: – we are bothering, we need to have them stop bothering us because we don't bother anybody.

COUNCIL MEMBER GEORGE FORD: Right.

COUNCIL MEMBER BRAD HULSEY: Well –

COUNCIL MEMBER GEORGE FORD: We understand you here but nevertheless if we issue a land use permit for that particular property, then, you know?

COUNCIL MEMBER BRAD HULSEY: It's again – I'll go back –

COUNCIL MEMBER GEORGE FORD: It'll mess up their property.

COUNCIL MEMBER BRAD HULSEY: You all currently have, and for the people who don't understand, you all currently have a customary home occupation license that the City granted to you.

MS. SARDONELL: Right.

COUNCIL MEMBER GEORGE FORD: Right.

MS. SARDONELL: And three of our neighbors are here that can speak on our behalf that we do not disturb people.

COUNCIL MEMBER BRAD HULSEY: Sure.

MS. SARDONELL: And, of course, Councilman Noriega is a neighbor and he can't see our house, so I don't really count you, I'm sorry, but –

COUNCIL MEMBER BRAD HULSEY: And I understand that, but – and I'm not arguing that yea or nay. Okay? I haven't had anyone contact me, per se, but still we have the issue of the customary home occupation license that calls for certain criteria that you all meet.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: That's why we are at this point because you all do not meet the criteria of the customary home occupation license. The license says that you can only park one vehicle pertaining to the business –

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: on your premises and you all have been parking two. The reason why – because you have an opening.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: And that's your van that you own for your business and you want to keep it there. That's the reason that you all have given us.

Also, and I guess that it is open for discussion, as to what congregating is, but the other issue, that I saw, was that we know is a fact, that your employees have been coming there – the word actually that is used is congregating. And, of course, we could debate that, I guess, but – what congregating means. But, because your employees have been there, at times, to pick up work orders and at times to pick up their paychecks, the under [sic] the customary home occupation, then that would be considered potentially congregating on the premises.

You have assured us at the agenda session that you would meet the congregating issue but still you cannot assure us that – that you would meet the stipulation of only one commercial vehicle.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: And my question would be to you is we've got thirty-one days here. Could you not meet that criteria and us not go through this process of a land use permit.

MS. SARDONELL: No. Because we still haven't gotten another technician so we're still going to have the two vans which means someone is going to continue complaining.

COUNCIL MEMBER BRAD HULSEY: Is there no way that you could move that vehicle to another location for one month?

MS. SARDONELL: No, because it could get vandalized, it could be stolen, it could – things could be stolen off of it and we just don't feel that we should have to be put in that position for thirty days either.

MR. SARDONELL: Each day I have invested twenty-five to thirty thousand dollars on each van, even though I give the instance of the estimate there, for stuff that's retained on those vehicles. It is an expensive business to be in.

COUNCIL MEMBER BRAD HULSEY: I understand that.

MS. SARDONELL: So rather than do that, we have made arrangements for a commercial location. I have the letter from the City. We've already shown that the numerous deliveries is false allegations.

COUNCIL MEMBER BRAD HULSEY: Well, I mean, I said that's neither here nor there.

MS. SARDONELL: Yeah, I know, I realize that.

COUNCIL MEMBER BRAD HULSEY: I was giving you the two situations that you had, that you are required to come to us to ask for a land use permit, that we know of.

MS. SARDONELL: Yeah. Our employees – that issue is already been being addressed.

COUNCIL MEMBER BRAD HULSEY: Right, you had told us that.

MS. SARDONELL: So it is just a matter of the van and we again we have no more vehicles now than he has ever had at that house. He has always since '87 had two vans and his motorcycles there.

COUNCIL MEMBER BRAD HULSEY: But, but, I understand that, and, and be that as it may – and, of course, I'm here to argue with you but, but under the customary home occupation license, it explicitly says in there that if vehicles pertaining to the business under which the customary home occupation license was given, then you have to have only one vehicle.

MS. SARDONELL: Right.

COUNCIL MEMBER BRAD HULSEY: At that time in 1987, you didn't have a customary home occupation where you were parking the vehicles.

MS. SARDONELL: So that's why we applied for the la l use permit because it says if we can't meet the strict interpretation of that section, we can apply for a land use permit –

COUNCIL MEMBER BRAD HULSEY: Right.

MS. SARDONELL: and that's what we've done. You know, we are not asking to put a parking lot there – and I did send letters to all of the neighbors asking them to join us tonight with objections, suggestions, or support. Three of them are here. And I only sent them again to the

neighbors that can see our home. I didn't send them to the people down the street, around the curve, and wherever else – and you already got a copy of the petition and I guess that would be all.

MS. BANDY: No one has signed up to speak either in favor of or in opposition to this application. But, if there is anyone here that would like to be recognized, just by show of hands, as being in opposition.

MAYOR SAILORS: There are three.

MS. BANDY: Or in favor of. In opposition of? Or in favor of this application?

MAYOR SAILORS: You have three.

COUNCIL MEMBER PATRICIA VAUGHN: Are you asking for this for just a month?

MS. SARDONELL: Yes, ma'am. Because we still for that one month we are not going to be able to comply and we really don't need to keep getting letters and being concerned about whether or not we are going to be getting tickets or cited or whatever.

MAYOR SAILORS: You know, it goes back to what we've talked about on Wednesday evening. And I'll be very frank and very candid. I wish that we did not allow land use permits in our City. It doesn't do anything to enhance the residential neighborhoods and it creates traffic, it creates a lot of problems. However, with that said, we have issued quite a few and you mentioned some the other night – daycare, piano teacher, maybe a computer in-home operation, but, our neighborhoods are our neighborhoods and people bought houses to live there. They didn't buy those houses in a commercial setting or an

industrial setting, they both [sic] them in a residential setting. And, again we have – I think we have been very lenient, our planning commission as well as this elected council in granting several throughout the years. But that's not to say that it was the right thing to do. As I told you the other night, and I'll tell your husband, I don't have a problem and I don't think our council had a problem. I don't think the Planning & Zoning probably had a problem with your home office being there and that, in itself saves you as a small business person a lot of dollars by having that office in your home. But then when it gets to the point of trucks in and out, personnel in and out, that's taking away from the residential neighborhood. And we have a compliance officer coming on board the first of April. This was a goal that this council has had now for some time and our police department doesn't have the manpower to do it. Our building inspector doesn't have the manpower to do it, but we are going to tighten up on violations, code violations. Hopefully, we'll be doing this on a regular basis come April one.

But, I would be willing to entertain a motion from the council. I don't know if we can do this. Ms. Bandy, you correct me if I'm wrong. If we could issue you a thirty-day temporary van parking permit, if council would go along – I would entertain a motion for that. But, to issue a land use permit for what you [sic] application says –

COUNCIL MEMBER GARY NORIEGA: May I say something, Mayor?

MAYOR SAILORS: Yes.

COUNCIL MEMBER GARY NORIEGA: That, that thought has crossed my mind, Ms. Sardonell, this evening, but, and Mr. Sardonell, but I've got to be quite

frank with you also. All right, I wonder, even though I'm entertaining the thought of a temporary land use permit, help me to understand why in the next thirty days you two couldn't work within the parameters of the permit that you already have. I mean, you're asking me to do this and the thought has crossed my mind, but also I guess I'm just a little frustrated cause, I'm thinking, if you could do this on your end, we wouldn't have to go through this.

MR. SARDONELL: We are doing this stuff, sir. We have –

MS. SARDONELL: We've already –

MR. SARDONELL: We have a –

MS. SARDONELL: got a commercial location.

MR. SARDONELL: We have agreed to a commercial location. So I think we have made every honest attempt and gone above and beyond in doing it.

MAYOR SAILORS: Will you have a secured area to park the trucks?

MS. SARDONELL: Yes, sir.

MAYOR SAILORS: In the space that you're renting?

MS. SARDONELL: Yes, sir. It is – there is a fence around the area. It's back behind Kentucky Fried Chicken.

MAYOR SAILORS: Well, in all fairness.

MR. SARDONELL: I mean, like Sharon Drive has two eighteen-wheelers right down the road down here. We are not asking for eighteen-wheelers. We just have a

simple van that I have had since I've moved in at this place.

MS. SARDONELL: And our customers do not come to our home. Our employees are not in and out. Our employees do drive our vehicles – they've been going straight to job site in the mornings, they don't come over.

MAYOR SAILORS: Let me address Mr. Sardonnell's comment there. The old saying is the squeaky wheel gets the grease and that's pretty true. But come April one, when this code enforcement officer is on board, that's going to be his primary duty is to be out and, and not trying to haggle people, but if there are code violations, he'll be out addressing them. He'll be citing those people. He'll be bringing them into court and some of those that maybe the – hadn't required the squeaky wheel and hadn't got to that point, they'll be addressed in the meantime.

So we know that there violations out there. There are a lot of people that have business that we know nothing about. They haven't came down and went through the process. But, you know, there's nothing you can do about that.

MS. SARDONELL: Can – well like, you know –

COUNCIL MEMBER SID BAXTER: I would like to answer his other question, too, the one about the trucks on Sharon Drive.

MR. SARDONELL: There are two eighteen-wheelers with the trailers.

COUNCIL MEMBER SID BAXTER: That is both where they park them is commercial area.

MR. SARDONELL: In the residential –?

COUNCIL MEMBER SID BAXTER: At the end of that road where they park them is commercial.

MR. SARDONELL: Not the end, we are talking right next to his – one is in his backyard and one right in front of his home.

COUNCIL MEMBER SID BAXTER: Well it's about three houses on the left-hand side there and that's where he's been parking and that is commercial.

MR. SARDONELL: Commercial? Looks like it's residential, all right.

MS. SARDONELL: Can, I address something else?

MR. SARDONELL: I'll move the van. I'll take it and get it out.

MS. SARDONELL: No, I don't think so, wait. I want, can I address something else?

MAYOR SAILORS: Two wrongs don't make a right, so, you know, that's a, that's another problem.

MS. SARDONELL: You mentioned the other night about having a junkyard, Mr. Noriega, I think can speak hopefully on this part. When you look out toward Lancer, I know from my car porch, I see a lot of junk. Our yard does not look like that. Those people don't have the business, so how – yet their [sic] not bothered and I know that's against codes, what I see when I look toward Lancer.

COUNCIL MEMBER GEORGE FORD: That's why we're getting another code enforcement officer.

MS. SARDONELL: Yeah.

COUNCIL MEMBER GEORGE FORD: We can't take care of what we've got.

COUNCIL MEMBER BRAD HULSEY: We are slowly but surely addressing these problems. Some in the very area you are talking about. We are just not able to get to them all right now.

MS. SARDONELL: Yeah.

MAYOR SAILORS: That's exactly right.

COUNCIL MEMBER BRAD HULSEY: When we get the – this compliance officer in, we hope that that's going to curtail these situations and we are going to address them.

MS. SARDONELL: I would still like to ask for a thirty-day temporary, either a van parking permit, as you said or a land use permit either – whatever you want to call it is fine. Simply because for the next thirty days – we were told today April first we should be able to move into this location.

COUNCIL MEMBER GEORGE FORD: Well, I don't see why we can't just give you permission to use what you have right now for thirty days.

MS. SARDONELL: Well, that's what we'd like to do and just be able to keep our vans there. And, by the way, we are interviewing somebody else this Saturday.

COUNCIL MEMBER SID BAXTER: What if you can't move in April first, then you are stuck with this van.

MR. SARDONELL: We'll move the van because we are going to move to this property by April first.

MS. SARDONELL: Yeah, because he's actually got to make provisions for the vehicles. He's – that's one of the things he is doing.

COUNCIL MEMBER SID BAXTER: I would think you would want to get an extra few days just in case you didn't get in, but –

MAYOR SAILORS: I think that what they are asking for is reasonable because I think on Wednesday when we discussed this, I believe Councilman Hulsey made a suggestion and I believe you followed up on that as far as getting some property to park the vehicles – well, you've took it a step further, you got a location for a commercial location.

MS. SARDONELL: Yeah.

MAYOR SAILORS: Could, could we issue a temporary permit?

MS. BUNDY: Under the – let me check the code, Mr. Mayor, if you'll give me a minute.

MAYOR SAILORS: Okay. And it wouldn't necessarily have to be a temporary permit. What I'm hearing from these people tonight is come April first, which is one month from today, they're going to be relocated in a commercial setting. The vans will not be parked

in the residential setting. So, you know, I think – I don't think thirty days is unreasonable to

MS. SARDONELL: The one van that he drives will still be there. It is just the one van he drives.

MAYOR SAILORS: One vehicle?

COUNCIL MEMBER BRAD HULSEY: Then when they move their, I mean, it will be fine once they move their commercial – so come April first if we grant some type of temporary license or parking permit or whatever, then after April first, then what happens to their customary home occupation license?

MR. SARDONELL: Well, we'll no longer, that'd be transferred, that's what we've got to get squared away with the City. We have got to get the –

MS. SARDONELL: What do we do to transfer our business license or do we apply for a new one or what do we need to do?

MAYOR SAILORS: Are you going to move your office there also?

MR. SARDONELL: Yeah, our office will be there.

MAYOR SAILORS: Okay.

MAYOR SAILORS: Well, it's like Coach says, under your existing customary home occupation permit, is that still good through – is it still good?

COUNCIL MEMBER GEORGE FORD: Yeah.

MAYOR SAILORS: And they have a current business license. Okay, so really what we're talking about doing –

COUNCIL MEMBER BRAD HULSEY: is the van.

MAYOR SAILORS: is giving them a temporary permit for thirty days to park that van?

CITY MANAGER WAYNE WRIGHT: I've got a suggestion.

MAYOR SAILORS: Okay.

CITY MANAGER WAYNE WRIGHT: You could simply continue the consideration of the case for thirty days and at which time, if everything is fine, you dismiss the case and

MAYOR SAILORS: That's what Coach suggested.

MS. SARDONELL: Coach Ford suggested that.

CITY MANAGER WAYNE WRIGHT: If it's not fine, you take action on it – deny it or whatever and then the City will take the appropriate enforcement action as a result of the Council's action.

MS. SARDONELL: Now, are you going to keep writing me letters? Actually is Mr. Blackmon going to write me some more letters?

MR. SARDONELL: I already have two other vehicles that I already keep off the premises. I've got four vehicles on-line and I already keep the other two, we're

just having a problem with one until I get another gentlemen in there.

MAYOR SAILORS: Well it sounds to me like you folks are trying to do what is right. And I wouldn't – you know –

COUNCIL MEMBER GEORGE FORD: Just give them thirty days.

COUNCIL MEMBER BRAD HULSEY: Can we just table it?

MAYOR SAILORS: Coach suggested this from the, when we came back in here that we postpone this for thirty days and Mr. Blackmon can be instructed that you are allowed two vans there for the next thirty days. Gary, can you live with that?

COUNCIL MEMBER GARY NORIEGA: Yes, sir.

MAYOR SAILORS: And, and then you come back here or if you get moved – what's our first council meeting in April? April fifth. If you are in your new location by April fifth, call Mr. Wright and say we are withdrawing our request and that'll be the end of it.

MS. SARDONELL: Okay.

MAYOR SAILORS: Okay? Can ya'll live with that.

COUNCIL MEMBER BRAD HULSEY: Yes, sir.

COUNCIL MEMBER GARY NORIEGA: Yes, sir.

COUNCIL MEMBER GEORGE FORD: Yes, sir.

MS. BANDY: We'll need a motion and a vote, too.

MAYOR SAILORS: All right, we need a motion to do this and a vote.

COUNCIL MEMBER GARY NORIEGA: I'll make the motion.

COUNCIL MEMBER GEORGE FORD: I'll second it.

MAYOR SAILORS: We have a motion and a second to continue this request until the first meeting in April. All in favor with the uplifted hand. Okay.

MS. SARDONELL: Okay.

MAYOR SAILORS: I want to – let me say this on behalf of our council and myself, our agenda sessions are open to the public and you came down last Wednesday and you were here and we talked. I appreciate the efforts on your behalf to live with the ordinances and it may be not financially feasible at this time, but I do, when I say I wish we didn't have any at all, I mean that sincerely. But I appreciate what you are doing to get your business in a commercial setting.

MS. SARDONELL: Actually, we had already been looking before all this started. And the person we are renting from, when I mentioned it to him, is he said why don't I rent you a place.

COUNCIL MEMBER GARY NORIEGA: Thank you both.

MAYOR SAILORS: Thank you. And like I said, if you get this thing settled before this council meeting, just let Mr. Wright know and we'll withdraw the request.

MS. SARDONELL: Now, do we need to apply for another business license in the commercial location?

COUNCIL MEMBER SID BAXTER: All you have to do is a change of address.

MAYOR SAILORS: Change of address, I would imagine.

COUNCIL MEMBER GEORGE FORD: Just transfer.

MAYOR SAILORS: See Mrs. Raper.

MS. SARDONELL: Okay.

MAYOR SAILORS: Thank you.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants.	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC

FOURTH AFFIDAVIT OF BETTY BRADY

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Betty Brady, who, being duly sworn, deposes and states as follows:

1.

My name is Betty Brady. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as City Clerk for the City of Powder Springs. In that capacity, I am responsible for keeping the official records for the City.

3.

I take the minutes for the City Council meetings.

4.

The attached copy of the minutes of the Powder Springs City Council Meeting of April 5, 1999 is a true and accurate copy of the original which is maintained as an official record of the City.

5.

Further affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

Sworn to before me this 8th
day of December, 2000.

/s/ Catherine Raper
Notary Public
Notary Public, Paulding County, Georgia
My Commission Expires Jan. 29, 2001

REGULAR CITY COUNCIL MEETING
CITY OF POWDER SPRINGS
APRIL 5, 1999

Mayor Sailors called the meeting to order at 7:00 P.M. All members of City Council were present with the exception of Gary Noriega, who was away on vacation. Also present were City Attorney Dale Bandy, City Manager Wayne Wright, and City Clerk Betty Brady.

Invocation: Wayne Wright. The Pledge of Allegiance to the Flag was led by Mayor Sailors.

The March 15, 1999 regular Council meeting minutes were approved as presented.

MAYOR'S COMMENTS:

- Announced April 19-April 23, 1999 will be Reside with Pride Week.
- Announced Grady Grier Drive was striped this past Friday and commended Bobby Elliott, Public Works Director for having the striping done.
- Announced the Ward I meeting will be April 15th; Ward II meeting will be April 22nd; and Ward III meeting will be May 20th from 7:00 PM to 9:00 PM. These meetings will be at City Hall.
- Announced the 6th Annual National Day of Prayer at City Hall will be Thursday, May 6, 1999; from 12 Noon to 1:00 PM.
- City Attorney Dale Bandy the National Crime Victims' Rights Week (4/25/99-5/1/99) Proclamation.
- Announced the recent Mayor and City Council retreat, held at Timber Ridge Conference Center in Mableton, was successful.

Sergeant Bill Greene introduced Patrol Officers Russell Davis and Matt Boyd as new employees with the City of Powder Springs Police Department.

CITIZEN'S COMMENTS:

None

CITY ATTORNEY:

Dale Bandy presented a rezoning application, and opened the public hearing for Mitchell Morris, Finch Road. The request is to change the zoning from R-80 to PUD (Planned Unit Development). Ms. Bandy stated a letter of withdrawal was received by the City. Reed Konigsmark was present and requested a two week postponement. BRAD HULSEY moved to postpone the application until April 19th. SID BAXTER seconded. The application was postponed by a VOTE OF 4 TO 0.

PAT VAUGHN moved to postpone the second reading of ORDINANCE 99-2 until April 19th. BRAD HULSEY seconded. The second reading of Ordinance 99-2 was postponed by a VOTE OF 4 TO 0.

James R. Story, Story Road, inquired as to the status of the development.

Mayor Sailors stated the houses are to be a minimum of 2,000 sq ft; the plat will be re-drawn for no curb cuts off Finch road except the entrance to the subdivision; and all houses will have masonry fronts.

Dale Bandy presented a rezoning application, and opened the public hearing, for Kerry L. and Nancy J. Cobb, 3830 New Macland Road. The request is to change the zoning from R-15 to CRC (Community Retail Commercial). Mr.

Cobb was present and requested to change his request from R-15 to CRC to R-15 to O&I (Office & Institutional). No one signed up to speak for or against the application. BRAD HULSEY moved to approve with the two following stipulations: (1) parking will be in the rear of the building; and (2) the final site plan will be approved by the Mayor and City Council. PAT VAUGHN seconded. APPROVED 4 TO 0.

Dale Bandy presented a variance application, and opened the public hearing, for Whittemore Homes, Inc., (Phase 3 of Hopeland Park Subdivision) off Shipp Road. The request is to obtain a variance from the sidewalk requirement as required by the City of Powder Springs Planned Unit Development district ordinance. Mr. Whittemore was present and stated the request is to be in uniformity with Phases 1 and 2. No one signed up to speak for or against the application. The Planning Commission recommended denial of the application. BRAD HULSEY moved to deny the application. SID BAXTER seconded. DENIED 4 TO 0.

Dale Bandy presented a rezoning application, and opened the public hearing, for Hawks Development (Thornton Associates), located off Lewis Road (16.705 acres). The request is to rezone from LI (Light Industrial) and GC (General Commercial) to FST (Fee Simple Townhouses). Representatives for Hawks Development were not present. Ms. Bandy read a letter from Garvis L. Sams, Jr., Attorney for the applicant, requesting continuance of the hearing for both applications of Hawks Development until May 3, 1999.

Ms. Hafeezah Wesley, representative of the Steeplechase Subdivision Homeowners Association, was present and presented the concerns of the homeowners association as

follows: (1) zoning change; (2) 1,500 sq ft houses; (3) $125,000 starting price of houses; (4) no amenity package planned; (5) added traffic; and (6) overcrowding of schools.

SID BAXTER moved to postpone the hearing until May 3, 1999. GEORGE FORD seconded. The hearing was postponed by a VOTE OF 4 TO.

Dale Bandy presented a rezoning application, and opened the public hearing, for Hawks Development (Estate of J. Harris Dew), located off Lewis Road (19.940 acres). The request is to rezone from LI (Light Industrial) and GC (General Commercial) to FST (Fee Simple Townhouses). Representative for Hawks Development were not present. GEORGE FORD moved to postpone the hearing until May 3, 1999. SID BAXTER seconded. The hearing was postponed by a VOTE OF 4 TO O.

Dale Bandy presented the first reading of ORDINANCE 99-3, and opened the public hearing, amending the Zoning Ordinance adopted in 1987 to provide for changes to the Tree Protection and Replacement Ordinance. No one signed up to speak for or against the ordinance change.

Dale Bandy presented the first reading of ORDINANCE 99-4, and opened the public hearing, to annex the following unincorporated island of property:

Parcel 2, Land Lot 725, 19th District, 2nd Section,
Cobb County, Georgia
Parcel 9, Land Lot 725, 19th District, 2nd Section,
Cobb County, Georgia
Parcel 3, Land Lot 682, 19th District, 2nd Section,
Cobb County, Georgia
Parcel 4, Land Lot 726, 19th District, 2nd Section,
Cobb County, Georgia

Parcel 1, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 2, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 5, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 6, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia
Parcel 8, Land Lot 726, 19th District, 2nd Section, Cobb County, Georgia

Mr. Tommy Little, 3270 New Macland Road and Mr. Ben E. Rush, 3228 New Macland Road were present signed up to speak during the public hearing. Mr. Little spoke in opposition to the annexation.

The public hearing was closed.

Dale Bandy presented an alcoholic beverage license application, and opened the public hearing, for Christopher Lee Bishoff (Publix), 3721 New Macland Road. The application request is for beer and wine package only. Mr. Bishoff was present. No one signed up to speak for or against the application. Mr. Bishoff stated Publix has training for all cashiers for identifying customers purchasing alcoholic beverages; he stated he understands the City of Powder Springs does not allow the sale of alcoholic beverages on Sunday; and the store hours are to be 7:00 AM to 10:00 PM, sevens [sic] days a week. The store is more than 600 feet from the nearest church or school. The projected opening date for the store is planned for May 6, 1999.

SID BAXTER moved to approve. GEORGE FORD seconded. APPROVED 4 TO 0.

Dale Bandy presented RESOLUTION 99-10 authorizing the Mayor to execute a loan agreement with the Georgia Environmental Facilities Authority (GEFA) to finance sewer extensions for the Warren Farm development and the Hill Road area sewers. PAT VAUGHN moved to approve. BRAD HULSEY seconded. APPROVED 4 TO 0. (If all the money is not needed, the City is not obligated to take it.)

Dale Bandy presented RESOLUTION 99-11 authorizing the Mayor to execute a contract between Emery & Garrett Groundwater, Inc. (Phase 3), and the City of Powder Springs. Cost is not to exceed $75,000. PAT VAUGHN moved to approve. BRAD HULSEY seconded. APPROVED 4 TO 0.

Dale Bandy presented RESOLUTION 99-12 authorizing the Mayor to execute a Community Development Block Grant sub-recipient agreement for FY 1999 by the Cobb County Board of Commissioners in the amount of $50,004. GEORGE FORD moved to approve. PAT VAUGHN seconded. APPROVED 4 TO 0.

Dale Bandy presented RESOLUTION 99-13 proclaiming the week of March 29, 1999 – April 4, 1999 as "Community Development Block Grant Week" in the City of Powder Springs. BRAD HULSEY moved to approve. PAT VAUGHN seconded. APPROVED 4 TO 0.

Dale Bandy presented a Land Use Permit application for Douglas E. Sardonell, 3891 Blythewood Circle, for the purpose of a home occupation business. Charlene Sardonell was present and stated the business has been relocated in a commercial area and requested the application be withdrawn. BRAD HULSEY moved to grant the

withdrawal [sic] the application. GEORGE FORD seconded. APPROVED 4 TO 0.

COUNCIL REPORTS:

George Ford – no report.

Brad Hulsey – stated Old Lost Mountain Road is now open.

Mr. Hulsey expressed his appreciation to the employees that donated to the March of Dimes for WalkAmerica and also stated there will be a drawing for a free dinner at Crawdadeez Restaurant. Mr. Hulsey commended Betty Brady for help in collecting the donations.

Sid Baxter – expressed his appreciation for the donations for the March of Dimes.

Mr. Baxter stated the recent Mayor and Council Retreat was successful.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants.	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC

AFFIDAVIT OF BETTY BRADY

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Betty Brady, who, being duly sworn, deposes and states as follows:

1.

My name is Betty Brady. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as City Clerk for the City of Powder Springs. In that capacity, I am responsible for keeping the official records for the City.

3.

I take the minutes for the City Council meetings.

4.

I keep the official audio tapes of the City Council meetings.

5.

I listened to that portion of the audio tape of the April 5, 1999 City Council meeting dealing with the issues involved in the above referenced case. I completed a transcription of that portion of the tape. A copy of my transcription is attached as Exhibit A to this Affidavit.

6.

To the best of my knowledge, the transcription attached hereto as Exhibit A is true and correct.

7.

I have also attached to this Affidavit the audio tape from which I made this transcription.

8.

Further Affiant saith nought.

Respectfully submitted this 8th day of December, 2000.

Sworn to before me this 8th day of December, 2000.

/s/ Betty Brady
BETTY BRADY

/s/ Catherine Raper
NOTARY PUBLIC

Notary Public, Paulding
County, Georgia
My Commission Expires
Jan. 29, 2001

EXHIBIT A

TRANSCRIPTION FROM CITY OF POWDER SPRINGS CITY COUNCIL MEETING 4/5/99 CASSETTE TAPE

MS. BANDY: The final item on the agenda is Land Use Permit of Douglas E. Sardonell, 3891 Blythewood Circle for a home occupation permit to obtain a land use permit for the purpose of a home occupation business in R-20 zoning. I see Ms. Sardonell is here.

MS. SARDONELL: Actually we already have a home occupation that was so we could park our vans at our home. But I do have where we have a commercial location now. I would still like for you to vote on that because I do still want to be able to park my vans at my house in the event that I need to. We own five vehicles and if my car is in the shop it's dumb for me to go rent a vehicle. All five of our vehicles, actually we own seven in

all but they are all tagged, they are all inspected, they all meet all the laws. There's nothing illegal about any of them and if we need to use them at our home then we should be able to park them there.

MS. BANDY: Now do I understand correctly though that you have moved your business license to a new address – so you don't you don't have a business license at this home address anymore right?

MS. SARDONELL: Right, right.

MS. BANDY: I, I think I understand what you're saying about the –

MS. SARDONELL: The vans is what's brought us here anyway.

MS. BANDY: Well the – I think that that [sic] you're right that the vans was kind of the catalyst of this – that the vans as tied to your home occupation license is what you were in violation of, um since you no longer have a business license at this address and you are not going to conduct an occupation out of this address anymore, uh we're not really dealing with the zoning restriction on parking your vehicle on your – in your driveway anyway. Am I correct about that? Am I interpreting that appropriately?

MS. SARDONELL: Can I clarify this? Because all since we've applied for this, the City Council has told me – we cannot park the van across the street at our other home, even if we moved license we cannot park those vans at that house and now it is okay for us to park our vans there?

COUNCIL MEMBER BRAD HULSEY: If you don't have a business license there.

COUNCIL MEMBER GEORGE FORD: Yeah.

MS. SARDONELL: We do not have a business office there.

MS. BANDY: And, as long as you're not conducting a business out of the home.

COUNCIL MEMBER GEORGE FORD: You said vans – how many vans?

MS. SARDONELL: Well we always keep two there usually.

COUNCIL MEMBER GEORGE FORD: Yeah, well you said you had about seven here so you know –

MS. SARDONELL: No we do have seven vehicles at home.

COUNCIL MEMBER GEORGE FORD: Right.

MS. SARDONELL: Yeah.

COUNCIL MEMBER GEORGE FORD: We don't want you to park them all right there.

MS. BANDY: No there are certain regulations –

MS. SARDONELL: No my driveway ain't that long – (laughter)

MS. BANDY: There's certain regulations – um- about parking on the street and that –

MS. SARDONELL: We don't do that.

MS. BANDY: and that kind of thing that –

COUNCIL MEMBER GEORGE FORD: Right.

MS. BANDY: that apply to residences and don't have anything to do with the business license.

MS. SARDONELL: Well that will – I'll address that. Also, how do I register – how do I sign up to address other issues like the one he just mentioned?

MS. BANDY: I'm not sure of the question – sign up to address other issues?

MS. SARDONELL: Yeah, if I want to speak on other issues – what do I have to do?

MAYOR SAILORS: When you come in we've got a sign-up form out there on the counter as you come in and you just sign your name there and when we have citizen's comments – we call you up and you speak.

MS. SARDONELL: Okay, so this issue is resolved? We can leave our vans there when we need to?

MS. BANDY: I – as long as they're not in violation of any other City ordinance. I'm not really in the position to tell you what – you know what your – what the vans are doing right now cause I, you know, I don't know. But as long as you're not in violation of any other City ordinance, I mean you're not operating a business out of your home. The restrictions on business vehicles are tied to your business license.

MS. SARDONELL: Cause like today I was using one of the vans. So, and that's all.

MS. BANDY: And uh.

COUNCIL MEMBER GEORGE FORD: As long [sic] you weren't conducting business.

MS. SARDONELL: No I wasn't.

COUNCIL MEMBER BRAD HUSLEY: Do we need to uh –

COUNCIL MEMBER GEORGE FORD: Okay.

COUNCIL MEMBER BRAD HULSEY: withdraw or –

MS. SARDONELL: Well, I – I don't really want to withdraw, I mean you can vote yea, you can vote no, you can just say it's resolved that we don't have the business there and –

COUNCIL MEMBER BRAD HULSEY: I was asking Ms. Bandy

MS. SARDONELL: Oh I'm sorry.

COUNCIL MEMBER BRAD HULSEY: but legally we need to do that.

MS. BANDY: Legally it is a – a withdrawal of the request from that address because it's no longer necessary, the business license has been moved. So we really just need your vote on the withdrawal.

COUNCIL MEMBER BRAD HULSEY: Okay, move that we, we grant the withdrawal request?

MS. BANDY: Yes.

COUNCIL MEMBER BRAD HULSEY: I move that we grant the withdrawal request of the land use permit.

COUNCIL MEMBER GEORGE FORD: I'll second that.

MAYOR SAILORS: We have a motion and a second to grant the withdrawal of the land use permit for Douglas Sardonell at 3891 Blythewood Circle. All in favor of granting the withdrawal, please indicate with the uplifted hand. Four to zero.

MS. SARDONELL: Thank you. Can I – can I – is it too late to make a comment on something else or do I need to come to the next meeting?

MAYOR SAILORS: No, go ahead.

MS. BANDY: It's up to the Mayor.

MAYOR SAILORS: Go ahead.

MS. SARDONELL: Okay, my question is this – as elected officials, okay? And if you – cause I understand you can't be everywhere at once. And I understand because compliance officers cannot be everywhere at once, so my questions still is though, as elected officials, when you see someone that's breaking the local codes and ordinances, is it – it's still up to you whether someone's complained or not to enforce those?

COUNCIL MEMBER BRAD HULSEY: Yes mam [sic].

COUNCIL MEMBER GEORGE FORD: Yes, it sure is.

MAYOR SAILORS: Anything that if, anytime you've been advised of something then you become part of it. If you know about something and you don't take any action then you are part of it. So if you call me up and say

so and so and so and so is breaking the law and I don't report it through the channels, then I hadn't done my job.

MS. SARDONELL: But, no, I'm saying if you yourself see it. This is saying theoretically, if you yourself see it and you don't do anything about it then actually you would be breaking the law yourself?

MAYOR SAILORS: Well I guess you would be if –

MS. SARDONELL: I mean as elected officials.

MS. BANDY: That's not

MS. SARDONELL: Not breaking the law – but as what I'm saying is as the elected officials to uphold the laws and ordinances when you see something in violation, isn't it still up to you to take the necessary steps so that the code compliance officer is aware of it?

COUNCIL MEMBER GEORGE FORD: Right, but a lot of times here you need someone to bring it to your attention really.

MS. SARDONELL: I realize that.

COUNCIL MEMBER GEORGE FORD: Even though you are looking at the thing sometime it just doesn't ring a bell of an ordinance or code.

COUNCIL MEMBER SID BAXTER: Your question on my part?

COUNCIL MEMBER BRAD HULSEY: Yes.

COUNCIL MEMBER SID BAXTER: When I see something that I know is in violation, I bring it to Mr.

Wright's attention and then they follow the channels to take care of it.

MS. SARDONELL: Okay.

MAYOR SAILORS: I would venture to say you could ask Mr. Wright that there's hardly a week that goes by that some member of this body doesn't drop him a note or a phone call with something that somebody has come to us with or we have seen ourselves.

MS. SARDONELL: Yeah.

MAYOR SAILORS: And you can't see everything and you can't police everything. Of course, it's not our job to police but, to answer your question, yeah we pass along on a regular basis.

MS. SARDONELL: That answers my question, thank you.

MS. BANDY: Thank you.

MS. BANDY: And that's it for me Mr. Mayor.

MAYOR SAILORS: Well thank you Ms. Bandy, you did an outstanding job.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL, Plaintiffs v. GARY NORIEGA, individually, and as a Council Member, City of Powder Springs, WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, individually and as Mayor, City of Powder Springs, VINCE BLACKMON, individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS, Defendants.	CIVIL ACTION FILE NO. 1:99-CV-1921-JEC

AFFIDAVIT OF CATHERINE RAPER

PERSONALLY appeared before me, an officer duly authorized to administer oaths, Catherine Raper, who, being duly sworn, deposes and states as follows:

1.

My name is Catherine Raper. I am over the age of eighteen and competent to make this Affidavit.

2.

I serve as Permits and Licensing Coordinator for the City of Powder Springs. In that capacity, I am responsible for the maintenance of all business licenses issued by the City.

3.

Attached hereto is Exhibit 1 are true and accurate copies of business licenses issued to Douglas Sardonell.

4.

On March 31, 1999, Douglas Sardonell requested that the business license issued to A Cool Flame Heating and Air Conditioning, Inc. be transferred from 3891 Blythewood Circle to 4018 Lindley Road, Suite 2A, Powder Springs, Georgia, 30127.

5.

In fulfillment of this request, I transferred the license on March 31, 1999. A copy of the reissued license is attached hereto as Exhibit 2.

6.

Further affiant sayeth not.

Respectfully submitted this 4th day of December, 2000.

/s/ Catherine Raper
CATHERINE RAPER

Sworn to before me this 4th
day of December, 2000.

/s/ Betty G. Brady
Notary Public
Notary Public, Cobb County, Georgia
My Commission Expires July 11, 2001

EXHIBIT 1

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME HEATING & AIR, INC.
3891 Blythewood Circle
Powder Springs, Georgia 30073

No.: 000546
Date of Issue: 01/01/95
Douglas E. Sardonell,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of Heating & Air Conditioning.

This Certificate Expires On December 31, 1995
Amount Due: 85.00

Witness my hand and seal with day and year above written

/s/ Betty Brady cr
Betty Brady *City Clerk*
FILE COPY

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HEATING & AIR, INC.
3891 BLYTHEWOOD
CIRCLE
POWDER SPRINGS, GA
30073

No.: 000001
Date of Issue: 1/01/96
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of HEATING & A/C CONTRACTOR.

This Certificate Expires On December 31, 1996
Amount Due: 85.00

Witness my hand and seal with day and year above written

Betty Brady *City Clerk*
FILE COPY 000000567

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HEATING & AIR, INC.
3891 BLYTHEWOOD
CIRCLE
POWDER SPRINGS, GA
30073

No.: 000102
Date of Issue: 1/01/97
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of HEATING & A/C CONTRACTOR.

This Certificate Expires On December 31, 1997
Amount Due: 85.00

Witness my hand and seal with day and year above written

Betty Brady *City Clerk*
FILE COPY 000000567

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HTG & AIR, INC.
3891 BLYTHEWOOD
CIRC
POWDER SPRINGS, GA
30127

No.: 000226
Date of Issue: 02/03/98
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of CLASS A-1.

This Certificate Expires On December 31, 1998

~~160.00~~
Amount Due: 235.00

Witness my hand and seal with day and year above written

_____
City Clerk

FILE COPY

EXHIBIT 2

CITY OF POWDER SPRINGS
P.O. BOX 46
POWDER SPRINGS, GEORGIA 30073
PHONE – 943-1666

Tax Certificate
Professional – Occupational

A COOLFLAME
HTG & AIR, INC.
~~3891 BLYTHEWOOD~~
~~CIRC~~ 4818 Lindley Rd – Ste 2A
POWDER SPRINGS, GA
30127

No.: 000063
Date of Issue: 12/28/98
(3/31/99)
DOUGLAS E SARDONELL,
Owner

in consideration of which Powder Springs, Georgia, has granted a certificate for carrying on the business of CLASS A-1.

This Certificate Expires On December 31, 1999
Amount Due: 160.00

PAID
DEC 23 1998
21.85

Witness my hand and seal with day and year above written

_____
City Clerk

FILE COPY

U.S. Census Bureau

QT-PL. **Race, Hispanic or Latino, and Age: 2000**
Data Set: Census 2000 Redistricting Data (Public Law 9
Geographic Area: **Powder Springs CCD, Cobb County**

NOTE: For information on confidentiality protection, nonsampling erro
http://factfinder.census.gov/home/en/datanotes/expplu.html.

Subject
RACE
Total population
One race
White
Black or African American
American Indian and Alaska Native
Asian
Native Hawaiian and Other Pacific Islander
Some other race
Two or more races
HISPANIC OR LATINO AND RACE
Total population
Hispanic or Latino (of any race)
Not Hispanic or Latino
One race
White
Black or African American
American Indian and Alaska Native
Asian
Native Hawaiian and Other Pacific Islander
Some other race
Two or more races

(X) Not applicable
Source: U.S. Census Bureau, Census 2000 Redistricting Da
Matrices PL 1, PL 2, PL 3, and PL 4

-171) Summary File
Georgia

and definitions, see

All ages		18 years and over	
Number	Percent	Number	Percent
31,741	**100.0**	**21,828**	**100.0**
31,214	98.3	21,593	98.9
20,419	64.3	14,864	68.1
9,722	30.6	6,041	27.7
71	0.2	52	0.2
361	1.1	264	1.2
13	0.0	9	0.0
628	2.0	363	1.7
527	1.7	235	1.1
31,741	**100.0**	**21,828**	**100.0**
1,369	4.3	844	3.9
30,372	95.7	20,984	96.1
29,975	94.4	20,802	95.3
19,854	62.6	14,482	66.3
9,634	30.4	5,983	27.4
50	0.2	41	0.2
355	1.1	258	1.2
12	0.0	8	0.0
70	0.2	30	0.1
397	1.3	182	0.8

a (Public Law 94-171) Summary File,

U.S. Census Bureau

DP-1. **Profile of General Demographic Characteristics: 2000**
Data Set: Census 2000 Summary File 1 (SF1) 100-Percent Data
Geographic Area: **Powder Springs CCD, Cobb County, Georgia**

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see http://factfinder.census.gov/home/en/datanotes/expsf1u.htm.

Subject	Number	Percent
Total population	31,741	100.0
SEX AND AGE		
Male	15,421	48.6
Female	16,320	51.4
Under 5 years	2,309	7.3
5 to 9 years	2,793	8.8
10 to 14 years	3,077	9.7
15 to 19 years	2,564	8.1
20 to 24 years	1,415	4.5
25 to 34 years	4,722	14.9
35 to 44 years	6,578	20.7
45 to 54 years	4,248	13.4
55 to 59 years	1,230	3.9
60 to 64 years	800	2.5
65 to 74 years	1,117	3.5
75 to 84 years	629	2.0
85 years and over	259	0.8
Median age (years)	33.3	(X)
18 years and over	21,828	68.8
Male	10,239	32.3

Female	11,589	36.5
21 years and over	20,668	65.1
62 years and over	2,484	7.8
65 years and over	2,005	6.3
Male	771	2.4
Female	1,234	3.9
RACE		
One race	31,214	98.3
White	20,419	64.3
Black or African American	9,722	30.6
American Indian and Alaska Native	71	0.2
Asian	361	1.1
Asian Indian	76	0.2
Chinese	40	0.1
Filipino	76	0.2
Japanese	19	0.1
Korean	42	0.1
Vietnamese	26	0.1
Other Asian[1]	82	0.3
Native Hawaiian and Other Pacific Islander	13	0.0
Native Hawaiian	7	0.0
Guamanian or Chamorro	2	0.0
Samoan	2	0.0
Other Pacific Islander[2]	2	0.0
Some other race	628	2.0
Two or more races	527	1.7

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

Race alone or in combination with one or more other races[3]		
White	20,818	65.6
Black or African American	9,986	31.5
American Indian and Alaska Native	209	0.7
Asian	465	1.5
Native Hawaiian and Other Pacific Islander	26	0.1
Some other race	808	2.5
HISPANIC OR LATINO AND RACE		
Total population	**31,741**	**100.0**
Hispanic or Latino (of any race)	1,369	4.3
Mexican	633	2.0
Puerto Rican	202	0.6
Cuban	65	0.2
Other Hispanic or Latino	469	1.5
Not Hispanic or Latino	30,372	95.7
White alone	19,854	62.6
RELATIONSHIP		
Total population	**31,741**	**100.0**
In households	31,448	99.1
Householder	10,390	32.7
Spouse	6,767	21.3
Child	11,312	35.6
Own child under 18 years	8,994	28.3
Other relatives	1,875	5.9
Under 18 years	783	2.5
Nonrelatives	1,104	3.5
Unmarried partner	408	1.3

[3] In combination with one or more other races listed. The six numbers may add to more than the total population and the six percentages may add to more than 100 percent because individuals may report more than one race.

In group quarters	293	0.9
Institutionalized population	248	0.8
Noninstitutionalized population	45	0.1
HOUSEHOLDS BY TYPE		
Total households	**10,390**	**100.0**
Family households (families)	8,588	82.7
With own children under 18 years	4,893	47.1
Married-couple family	6,767	65.1
With own children under 18 years	3,771	36.3
Female householder, no husband present	1,401	13.5
With own children under 18 years	862	8.3
Nonfamily households	1,802	17.3
Householder living alone	1,416	13.6
Householder 65 years and over	333	3.2
Households with individuals under 18 years	5,307	51.1
Households with individuals 65 years and over	1,322	12.7
Average household size	3.03	(X)
Average family size	3.32	(X)
HOUSING OCCUPANCY		
Total housing units	**10,667**	**100.0**
Occupied housing units	10,390	97.4
Vacant housing units	277	2.6
For seasonal, recreational, or occasional use	13	0.1
Homeowner vacancy rate (percent)	1.3	(X)
Rental vacancy rate (percent)	4.5	(X)

HOUSING TENURE		
Occupied housing units	**10,390**	**100.0**
Owner-occupied housing units	9,360	90.1
Renter-occupied housing units	1,030	9.9
Average household size of owner-occupied unit	3.01	(X)
Average household size of renter-occupied unit	3.17	(X)

(X) Not applicable

Source: U.S. Census Bureau, Census 2000 Summary File 1, Matrices P1, P3, P4, P8, P9, P12, P13, P17, P18, P19, P20, P23, P27, P28, P33, PCT5, PCT8, PCT11, PCT15, H1, H3, H4, H5, H11 and H12.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
2211 UNITED STATES COURTHOUSE
75 SPRING STREET, SW
ATLANTA, GEORGIA 30303-3361

LUTHER D. THOMAS
CLERK OF COURT

CIVIL SECTION
404-215-1655

July 16, 2001

USDC Civil Action No. 1:99-cv-1921-JEC

USCA No. 01-12824-E

In Reference: ***Eva Charlene Sardonell, et al. v. Gary Noriega, et al.***

CERTIFICATE OF READINESS OF RECORD ON APPEAL

Pursuant To Fed.R.App.P. 11(c), the Clerk of the District Court for the Northern District of Georgia hereby certifies that, as shown on the enclosed index, the record is complete for the purposes of this appeal. The record (including the transcript or parts thereof designated for inclusion and all necessary exhibits) consists of:

3 Volume(s) of pleadings

10 Volume(s) of depositions

__ Volume(s) of transcripts

__ Volume(s) of exhibits

__ Other:

Sincerely,

Luther D. Thomas
Clerk of Court
By: /s/ K. A. Carter
Deputy Clerk

Enclosures

CLOSED APPEAL

U.S. District Court
U.S. District Court for the Northern District
of Georgia (Atlanta

CIVIL DOCKET FOR CASE #: 99-CV-1921

Sardonell, et al v. Noriega, et al
Assigned to: Judge Julie E. Carnes
Demand: $1,000,000
Lead Docket: None
Dkt # in DD USCA – 11th Cir.: is: 00-15992
Dkt # in A USCA 11th Circuit: is: 00-12436
Filed: 07/27/99
Jury demand: Plaintiff
Nature of Suit: 440
Jurisdiction: Federal Question

Cause: 42:1983 Civil Rights – Action for deprivation of rights

EVA CHARLENE SARDONELL
plaintiff

George Melville Johnson
[term 11/09/99]
[COR LD NTC]
George Melville Johnson &
Associates
44 Broad Street, N.W.
The Grant Building, Suite 222
Atlanta, GA 30303
404-524-9111

Jacqueline K. Taylor
[COR LD NTC]
Taylor & Associates
1950 Spectrum Circle
400 Corporate Spectrum Building
Atlanta, GA 30067
770-857-4383

DOUGLAS SARDONELL
plaintiff
George Melville Johnson
[term 11/09/99]
(See above)
[COR LD NTC]

Caryl Sumner Black
[COR LD NTC]
Office of Caryl Sumner Black
5015 Oak Bluff Court
Atlanta, GA 30350
770-390-0101

Jacqueline K. Taylor
(See above)
[COR LD NTC]

GARY NORIEGA, individually and as Council Member, City of Powder Springs
defendant
Caryl Sumner Black
[COR LD NTC]
Office of Caryl Sumner Black
5015 Oak Bluff Court
Atlanta, GA 30350
77 – 390-0101

WAYNE WRIGHT, individually and as City Manager, City of Powder Springs
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

RICHARD SAILORS, individually
and as Mayor, City of Powder
Springs
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

VINCE BLACKMON, individually
and as Code Compliance Officer
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

CITY OF POWDER SPRINGS
defendant
Caryl Sumner Black
(See above)
[COR LD NTC]

7/27/99	1	COMPLAINT filed and summons(es) issued. Consent form to proceed before U.S. magistrate and pretrial instructions given to attorney; jury demand FILING FEE $150.00 receipt #442275 (aar) [Entry date 07/29/99]
7/27/99	2	ANSWERS TO MANDATORY DISCLOSURES by plaintiffs (aar) [Entry date 07/29/99]
8/31/99	—	Proposed consent order extending time for defts to answer [1-1] complaint until 9/30/99. to JEC (tcc) [Entry Date 09/01/99]
9/7/99	3	CONSENT ORDER by Judge Julie E. Carnes, extending time for defts to answer [1-1] complaint, Answer due 9/30/99 for City of Powder Spr, for Vince Blackmon, for

		Richard Sailors, for Wayne Wright, for Gary Noriega (cc) (tcc) [Entry date 09/09/99]
9/15/99	—	Added attorney for defendants: Caryl B. Sumner. (pa) [Entry date 09/15/99]
9/30/99	4	ANSWER by defendants to complaint [1-1] Discovery ends 2/27/00 (tcc) [Entry date 09/30/99]
10/19/99	5	MOTION by plaintiff to substitute attorney with brief in support, proposed order attached. (tcc) [Entry date 10/20/99]
10/29/99	6	Joint Preliminary Statement and Scheduling Order. (to judge) (tcc) [Entry date 11/01/99]
11/2/99	—	SUBMITTED to Judge Julie E. Carnes on [5-1] motion to substitute attorney (tcc) [Entry date 11/02/99]
11/5/99	7	Attorney appearance for plaintiffs by Jaqueline K. Taylor (tcc) [Entry date 11/08/99]
11/8/99	—	Summons issued for defendant Vince Blackmon (tcc) [Entry date 11/08/99]
11/9/99	8	ORDER by Judge Julie E. Carnes, the parties are reminded and put on notice that all future pleadings and other papers filed in this case must be in compliance with this Court's local rules regarding font size, margins and footnotes. The Court will not accept pleadings that violate the above local rules, GRANTING [5-1] motion to substitute attorney terminating attorney George Melville Johnson for Douglas Sardonell, attorney George Melville Johnson

for Eva Charlene Sardonell and adding attorney Jacquelin K. Taylor for Douglas Sardonell, attorney Jacqueline K. Taylor for Eva Charlene Sardonell. (cc) (tcc) [Entry date 11/10/99]

11/9/99 — Terminated submissions. (tcc) [Entry date 11/10/99]

11/30/99 — ENDORSED ORDER by Judge Julie E. Carnes APPROVING [6-1] preliminary statement (cc) (tcc) [Entry date 12/01/99]

11/30/99 9 ORDER by Judge Julie E. Carnes, Discovery ends 3/30/00, any motions for summary judgment must be filed by 4/19/00, and if no motions for summary judgment are filed, the proposed consolidated pre-trial order due on 5/1/00, however, if a motion for summary judgment is filed, the proposed consolidated pretrial order will be due w/in 30 days of the Court's ruling on the motion for summary judgment, [9-1] order to be submitted on 5/2/00 if the parties have not filed a motion for summary judgment or proposed consolidated pretrial order (cc) (tcc) [Entry date 12/01/99]

12/15/99 — Summons issued for Vince Blackmon, City of Powder Springs. (wse) [Entry date 12/16/99]

1/12/00 10 MOTION by defendants for abstention with brief in support. (wse) [Entry date 01/13/00]

1/12/00 11 Notice by CRD, the parties have failed to file certificate of interested persons, and the dft has failed to file mandatory disclosures. Counsel are directed to comply with the local rules on 1/24/00. [11-1] notice to be

submitted to Judge Carnes on 1/25/00 if the parties have not filed the above pleadings. The parties are also reminded of local rule re: font size. (Copies served by CRD) (wse) [Entry date 01/13/00]

1/14/00 12 ANSWERS TO MANDATORY DISCLOSURES by all defendants. (wse) [Entry date 01/18/00]

1/21/00 13 (Joint) Certificate of interested persons. (to judge) (wse) [Entry date 01/24/00]

1/21/00 14 MOTION by plaintiff for leave to file amendment to complaint w/ a proposed order attached. The proposed amendment to complaint is attached. (wse) [Entry date 01/24/00]

1/24/00 15 MOTION by defendants for leave to file amendment to answer defenses with a proposed order attached. The amended answer & defenses is attached. (wse) [Entry date 01/24/00]

1/31/00 — SUBMITTED to Judge Julie E. Carnes on [10-1] motion for abstention (wse) [Entry date 01/31/00]

1/31/00 16 Joint MOTION to extend time by 20 days for plas to reply to dfts [10-1] motion for abstention. a proposed order is attached. (To JEC for approval) (wse) [Entry date 02/01/00]

1/31/00 17 MOTION by defendants for summary judgment with brief & stmt of material facts in support. (Notice mailed to all parties) (wse) [Entry date 02/01/00]

2/7/00	—	SUBMITTED to Judge Julie E. Carnes on [14-1] motion for leave to file amendment to complaint. FILE IN CHAMBERS. (wse) [Entry date 02/07/00]
2/10/00	—	SUBMITTED to Judge Julie E. Carnes on [15-1] motion for leave to file amendment to answer defenses. FILE IN CHAMBERS. (wse) [Entry date 02/10/00]
2/10/00	18	ORDER by Judge Julie E. Carnes GRANTING [16-1] joint motion to extend time by 20 days from 1/24/00 for plas to reply to dfts [10-1] motion for abstention. (cc) (pdw) [Entry date 02/11/00]
2/10/00	19	ORDER by Judge Julie E. Carnes GRANTING plas' [14-1] motion for leave to file amendment to complaint (cc) (pdw) [Entry date 02/11/00] [Edit date 02/11/00]
2/10/00	20	ORDER by Judge Julie E. Carnes GRANTING dfts' [15-1] motion for leave to file amendment to answer defenses (cc) (pdw) [Entry date 02/11/00]
2/10/00	21	Amendment to [1-1] complaint by plaintiffs. (pdw) [Entry date 02/11/00]
2/10/00	22	AMENDED ANSWER by defendants to complaint [1-1] (pdw) [Entry date 02/11/00]
2/11/00	—	Terminated submissions. (pdw) [Entry date 02/11/00]
2/11/00	23	Notice by CRD, the parties are reminded of font size. (Copies served by CRD) (wse) [Entry date 02/14/00]

2/14/00	24	Brief by plaintiff in opposition to [10-1] motion for abstention (wse) [Entry date 02/15/00]
2/15/00	—	SUBMITTED to Judge Julie E. Carnes on [10-1] motion for abstention (wse) [Entry date 02/15/00]
2/18/00	25	MOTION by plaintiffs to dismiss or in the alternative to continue consideration of first motion for sum.jgm. with affidavits of Douglas Sardonell, E. Charlene Sardonell and Jacqueline K. Taylor in support (bsm) [Entry date 02/22/00]
2/22/00	26	MOTION by defendant for leave to file amendment to answer & defenses with a proposed order attached. (The amended answer & defenses are attached.) (wse) [Entry date 02/23/00]
2/22/00	28	AMENDED ANSWER & defenses to [22-1] answer by defendants. (wse) [Entry date 02/28/00]
2/23/00	27	MOTION by plaintiffs to extend time by 10 days from the date of notification of the Court's ruling on the pla's motion to dismiss to reply to dfts [17-1] motion for summary judgment with a proposed order attached. (wse) [Entry date 02/23/00]
2/25/00	—	SUBMITTED to Judge Julie E. Carnes on [17-1] motion for summary judgment. FILE IN CHAMBERS. (wse) [Entry date 02/25/00]
2/28/00	29	Brief in response by defendants to plas' brief in opposition to [10-1] motion for abstention (wse) [Entry date 02/29/00]

2/29/00	30	Reply by defendants to plas' [25-1] motion to dismiss, [25-2] motion to continue consideration of first motion for sum.jgm. (wse) [Entry date 03/01/00]
3/1/00	—	SUBMITTED to Judge Julie E. Carnes on [25-1] motion to dismiss, [25-2] motion to continue consideration of first motion for sum.jgm. FILE IN CHAMBERS. (wse) [Entry date 03/01/00]
3/3/00	31	ORDER by Judge Julie E. Carnes DENYING [17-1] motion for summary judgment by City of Powder Spr, Vince Blackmon, Richard Sailors, Wayne Wright, Gary Noriega, denying as moot the [25-1] motion to dismiss by Douglas Sardonell, Eva Charlene Sardonell, denying as moot the [25-2] motion to continue consideration of first motion for sum.jgm. by Douglas Sardonell, Eva Charlene Sardonell, GRANTING [26-1] motion for leave to file amendment to answer & defenses, and taking under advisement [10-1] motion for abstention. For the present, discovery is suspended. (CC) (wse) [Entry date 03/06/00]
3/3/00	—	Terminated submissions. (wse) [Entry date 03/06/00]
3/9/00	32	MOTION by plaintiffs for hearing on defendants' motion for abstention with counsel's affidavit in support. (ck) [Entry date 03/10/00]
3/13/00	—	SUBMITTED to Judge Julie E. Carnes on [27-1] motion to extend time by 10 days from the date of notification of the Court's ruling on the pla's motion to dismiss to

reply to dfts [17-1] motion for summary judgment (wse) [Entry date 03/13/00]

3/17/00 33 Response by defendants to pla's [32-1] motion for hearing on defendants' motion for abstention (wse) [Entry date 03/20/00] [Edit date 03/20/00]

3/20/00 — SUBMITTED to Judge Julie E. Carnes on [32-1] motion for hearing on defendants' motion for abstention. FILE IN CHAMBERS. (wse) [Entry date 03/20/00] [Edit date 03/20/00]

3/21/00 34 ORDER by Judge Julie E. Carnes: [10-1] motion for abstention is taken under ADVISEMENT, and denying as moot the [27-1] motion to extend time by 10 days from the date of notification of the Court's ruling on the pla's motion to dismiss to reply to dfts [17-1] motion for summary judgment. The Court's order of 3/3/00 moots this motion. (cc) (wse) [Entry date 03/22/00]

3/21/00 — Terminated submissions. (wse) [Entry date 03/22/00]

4/6/00 35 ORDER by Judge Julie E. Carnes GRANTING [10-1] motion for abstention, DENYING [32-1] motion for hearing on defendants' motion for abstention by Douglas Sardonell, Eva Charlene Sardonell. The case is stayed pending the resolution of the parallel state court proceeding, and that the clerk administratively and statistically terminate the action, as resolution of the state proceeding may resolve the federal claims. Plas should inform the Court w/in 20 days of the resolution of the state court case whether

		any further action is necessary in this federal proceeding. (copies by CRD) (wse) [Entry date 04/07/00]
4/6/00	—	Terminated submissions. (wse) [Entry date 04/07/00]
4/6/00	—	Case terminated. (wse) [Entry date 04/07/00]
5/5/00	36	NOTICE OF APPEAL by plaintiff from [35-1] order FILING FEE $105.00 RECEIPT #454242 Appeal information sheet due 5/19/00 (crc) [Entry date 05/08/00]
5/8/00	—	Notice of appeal, certified copy of order and certified copy of docket to USCA RE: [36-1] appeal (crc) [Entry date 05/08/00]
5/17/00	37	Acknowledgment by USCA RE: [36-1] appeal USCA dkt no. 00-12436-A (epm) [Entry date 05/18/00]
6/1/00	38	Appeal information sheet RE: [36-1] appeal – USCA dkt #00-12436-A COR due 6/11/00 (epm) [Entry date 06/02/00]
9/1/00	39	MOTION by plaintiffs to reopen proceedings with a proposed order attached. (wse) [Entry date 09/05/00]
9/13/00	40	Response by defendants to [39-1] motion to reopen proceedings (aet) [Entry date 09/14/00]
9/20/00	—	SUBMITTED to Judge Julie E. Carnes on [39-1] motion to reopen proceedings (wse) [Entry date 09/20/00]
9/22/00	—	Submission Letter sent to USCA [36-1] appeal (epm) [Entry date 09/22/00]

10/3/00	41	ORDER by Judge Julie E. Carnes GRANTING [39-1] motion to reopen proceedings. As there is now no issue for Eleventh Circuit to resolve, plas should dismiss their appeal. (cc) (wse) [Entry date 10/04/00]
10/3/00	—	Case reopened. (wse) [Entry date 10/04/00]
10/3/00	—	USCA acknowledgment of Submission Letter RE: [36-1] appeal USCA #00-12436-A (epm) [Entry date 10/05/00]
10/4/00	—	Terminated submissions. (wse) [Entry date 10/04/00]
10/6/00	—	CERTIFICATE OF READINESS of appeal record with certified copy of docket mailed to USCA RE: [36-1] appeal USCA #00-12436-A (2 vols. pleadings) (epm) [Entry date 10/06/00]
10/10/00	42	Notice to take continuation of deposition of City of Powder Springs by plaintiff (wse) [Entry date 10/11/00]
10/13/00	43	Notice of change of address by plaintiffs atty. (wse) [Entry date 10/17/00]
10/18/00	—	USCA acknowledgment of COR RE: [36-1] appeal USCA #00-12436-A (epm) [Entry date 10/19/00]
10/23/00	—	Forwarded Certified Copy – Doc. #41 (Order) to the USCA RE: [36-1] appeal USCA #00-12436-A (epm) [Entry date 10/23/00]
10/26/00	—	Certified and transmitted record (2 vols of pleadings) to USCA RE: [36-1] appeal. USCA dkt no. 00-12436-A. (dfb) [Entry date 10/26/00]

11/1/00	44	NOTICE OF APPEAL by plaintiff from [41-1] order FILING FEE $105.00 RECEIPT #462125 Appeal information sheet due 11/15/00 (fms) [Entry date 11/14/00]
11/2/00	—	USCA acknowledgment of Record on Appeal (2 Volumes) RE: [36-1] appeal USCA #00-12436-A (kac) [Entry date 11/07/00] [Edit date 11/07/00]
11/3/00	45	AMENDED NOTICE OF APPEAL by plaintiff Eva Charlene Sardonell, plaintiff Douglas Sardonell from [41-1] order FILING FEE $105.00 RECEIPT #462125 (kac) [Entry date 11/14/00]
11/9/00	46	Certified copy of ORDER of USCA DISMISSING [36-1] appeal USCA dkt no. 00-12436-AA (Rec'd vol 1, 2 of 2) (wse) [Entry date 11/14/00]
11/14/00	—	Notice of appeal, cert copy of order and certified copy of docket to USCA RE: [44-1] appeal (fms) [Entry date 11/14/00]
11/14/00	—	Amended Notice of appeal, order and certified copy of docket to USCA RE: [45-1] appeal (kac) [Entry date 11/14/00] [Edit date 11/14/00]
11/17/00	—	USCA acknowledgment of Amended Notice of Appeal, certified docket and order RE: [45-1] appeal USCA #00-15992-DD (kac) [Entry date 11/22/00]
11/21/00	47	Acknowledgment by USCA RE: [44-1] appeal USCA dkt no. 00-15992-DD (kac) [Entry date 11/22/00]
12/12/00	48	MOTION by plaintiffs for leave to file plas' second amendment to complaint with a

		proposed order attached. A proposed second amendment to complaint is attached. (wse) [Entry date 12/13/00]
12/14/00	49	MOTION by defendants to file excess pages limitation with brief in support. (To JEC for approval) (wse) [Entry date 12/14/00]
12/14/00	50	MOTION by defendants for summary judgment with brief & stmt of material facts in support. (Notice mailed to all parties) (wse) [Entry date 12/14/00]
12/14/00	51	Notice & Request of filing original discovery & affidavits by defendants. (wse) [Entry date 12/14/00]
12/14/00	—	Deposition of DOUGLAS SARDONELL taken for defendants (wse) [Entry date 12/14/00]
12/20/00	52	ANSWER by defendants to proposed second amendment to complaint [1-1] (wse) [Entry date 12/20/00]
12/20/00	53	Brief by defendants in opposition to plas' [48-1] motion for leave to file plas' second amendment to complaint (wse) [Entry date 12/20/00]
1/3/01	54	ORDER by Judge Julie E. Carnes GRANTING [49-1] motion to file excess pages limitation (cc) (wse) [Entry date 01/04/01] [Edit date 01/12/01]
1/4/01	—	SUBMITTED to Judge Julie E. Carnes on [48-1] motion for leave to file plas' second amendment to complaint, [49-1] motion to file excess pages limitation (wse) [Entry date 01/04/01]

1/8/01	55	Notice of filing discovery, depositions (of Wayne Wright (vol 1 & 2), Gary Noriega, Mary Sitherwood, Betty Joe Murphy, Lt. James Freeland, and Eva Charlene Sardonell), and affidavits by plaintiffs. (wse) [Entry date 01/09/01]
1/8/01	56	Affidavits of Edward Harper, John Long, James McTyre, Gordon Powell, Sheila Powell, Douglas Sardonell, Loy Windham. (wse) [Entry date 01/09/01]
1/8/01	—	Depositions of GARY V. NORIEGA, BETTY JO MURPHY, MARY MADERA SITHERWOOD, LT. JAMES E. FREELAND, EVA CHARLENE SARDONELL, and WAYNE WRIGHT taken for plaintiffs. (wse) [Entry date 01/09/01]
1/8/01	57	REPLY by plaintiffs to dfts' opposition to plas' [48-1] motion for leave to file plas' second amendment to complaint (wse) [Entry date 01/09/01]
1/8/01	58	Memorandum by plaintiffs and opposition to dfts' [50-1] motion for summary judgment. Also included are plas stmt of material facts. (wse) [Entry date 01/10/01]
1/9/01	—	SUBMITTED to Judge Julie E. Carnes on [50-1] motion for summary judgment. FILE IN CHAMBERS. (wse) [Entry date 01/09/01]
1/10/01	59	ORDER by Judge Julie E. Carnes GRANTING [49-1] motion to file excess pages limitation (cc) (wse) [Entry date 01/11/01]

1/10/01	60	MOTION by plaintiff to strike portions of the dfts' brief in support of [50-1] motion for summary judgment (wse) [Entry date 01/11/01)
1/10/91	61	MOTION by plaintiffs for hearing on dfts' motion for sum jgm and plas' motion to strike (wse) [Entry date 01/11/01]
1/17/01	62	Certified copy of ORDER of USCA DISMISSING [44-1] appeal, and DISMISSING [45-1] appeal. USCA dkt no. 00-15992-DD (wse) [Entry date 01/18/01]
1/22/01	63	Response by defendants to plas' [60-1] motion to strike portions of the dfts' brief in support of [50-1] motion for summary judgment (wse) [Entry date 01/23/01]
1/22/01	64	RESPONSE by defendants in response to plas' memorandum in opposition to [50-1] motion for summary judgment (wse) [Entry date 01/23/01]
1/31/01	65	MOTION by plaintiff for leave of court to file excess pages limitation. (jph) [Entry date 02/01/01]
1/31/01	66	MOTION by plaintiff to continue consideration of dfts' motion for summary jugment with brief in support. (jph) [Entry date 02/01/01]
2/5/01	—	SUBMITTED to Judge Julie E. Carnes on [60-1] motion to strike portions of the dfts' brief in support of [50-1] motion for summary judgment, [61-1] motion for hearing on dfts' motion for sum jgm and plas' motion to strike (File in chambers) (jph) [Entry date 02/05/01]

2/22/01	—	SUBMITTED to Judge Julie E. Carnes on [65-1] motion for leave of court to file excess pages limitation, [66-1] motion to continue consideration of dfts' motion for summary jugment (File in chambers) (jph) [Entry date 02/22/01]
4/19/01	67	ORDER by Judge Julie E. Carnes DENYING [48-1] motion for leave to file plas' second amendment to complaint by Douglas Sardonell, Eva Charlene Sardonell, GRANTING [50-1] motion for summary judgment, DENYING [60-1] motion to strike portions of the dfts' brief in support of [50-1] motion for summary judgment by Douglas Sardonell, Eva Charlene Sardonell, DENYING [61-1] motion for hearing on dfts' motion for sum jgm and plas' motion to strike by Douglas Sardonell, Eva Charlene Sardonell, GRANTING [65-1] motion for leave of court to file excess pages limitation, denying as moot the [66-1] motion to continue consideration of dfts' motion for summary jugment by Douglas Sardonell, Eva Charlene Sardonell (cc) (jph) [Entry date 04/19/01]
4/19/01	68	JUDGMENT ENTERED for defendants against plaintiffs for costs of action (cc) (jph) [Entry date 04/19/01]
4/19/01	—	Case terminated. (jph) [Entry date 04/19/01]
5/16/01	69	NOTICE OF APPEAL by plaintiff from [68-1] judgment, [67-1] order Appeal information sheet due 5/30/01 (Appeal fee letter sent on 5/21/01) cc:USCA (jlm) [Entry date 05/21/01]

5/21/01	—	Notice of appeal, order, judgment, appeal fee ltr and certified copy of docket to USCA RE: [69-1] appeal (jlm) [Entry date 05/21/01]
5/24/01	—	Appeal fees received FILING FEE $105.00 RECEIPT #471734 RE: [69-1] appeal USCA dkt no. 01-12824-E (kac) [Entry date 05/29/01]
5/25/01	70	Acknowledgment by USCA RE: [69-1] appeal USCA dkt no. 01-12824-E (kac) [Entry date 05/29/01]
5/29/01	—	Forwarded docket sheets reflecting payment of appeal filing and docketing fees to the USCA RE: [69-1] appeal USCA #01-12824-E (kac) [Entry date 05/29/01]
6/5/01	—	USCA acknowledgment of certified copy of docket sheets reflecting payment of appeal filing and docketing fees RE: [69-1] appeal USCA #01-12824-E (kac) [Entry date 06/05/01]
6/29/01	71	Appeal information sheet RE: [69-1] appeal – USCA dkt #01-12824-E COR due 7/9/01 (kac) [Entry date 07/02/01]
7/16/01	—	CERTIFICATE OF READINESS of appeal record with certified copy of docket mailed to USCA RE: [69-1] appeal USCA #01-12824-E (3 Vols. pldgs, 10 Depositions) (kac) [Entry date 07/16/01]

Supreme Court, U.S.
FILED
JUN 28 2002
CLERK

(3)

No. 01-1712

In The
Supreme Court of the United States

EVA CHARLENE SARDONELL and
DOUGLAS SARDONELL,

Petitioners,

v.

GARY NORIEGA, individually, and as a Council Member, City of Powder Springs; WAYNE WRIGHT, individually, and as City Manager, City of Powder Springs; RICHARD SAILORS, individually, and as mayor, City of Powder Springs; VINCE BLACKMON, individually, and as Code Compliance Officer, City of Powder Springs; and the CITY OF POWDER SPRINGS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF

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17 Pages

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Barrows v. Jackson, 346 U.S. 249 (1953) 3, 4, 5

Celotex Corp. v. Catrett, 477 U.S. 317 (1996) 6

City of Memphis v. Greene, 451 U.S. 100 (1981) 4, 5

Graves v. Van Buskirk, 1991 WL 21545 (Oh. App. 9th Dist. Feb. 20, 1991)..... 5 n.2

Inland Mediation Board v. City of Pomona, 158 F.Supp. 2d 1120 (2001)..... 5 n.2

Sullivan v. Little Hunting Park, 396 U.S. 229 (1969)..... 1, *passim*

FEDERAL STATUTES

42 U.S.C. § 1981 2

42 U.S.C. § 1982 ..... 1, *passim*

42 U.S.C. § 1983 .....2, 10

42 U.S.C. § 1985 2

Fair Housing Act, 42 U.S.C. § 3604..... 2

REPLY BRIEF FOR THE PETITIONERS

The Petition for Certiorari (the "Petition" or "Pet.") is absolutely right that the Eleventh Circuit Court of Appeals' decision squarely conflicts with this Court's decision in *Sullivan v. Little Hunting Park*, 396 U.S. 229 (1969), and therefore should be summarily reversed.

Sullivan held that a white person who was punished by being "expelled from the [local recreational] corporation" of which he was a member, could sue therefore under 42 U.S.C. § 1982, where the reason for the expulsion was the white person's protest of the local recreational corporation's refusing to approve an assignment of the white person's membership share to the black person renting his house. *See Sullivan*, 396 U.S. at 235, 237.

The Petition showed that respondents – including the named officials of the City of Powder Springs, Georgia and through them the City proper – punished petitioners by means of an unfounded investigation, accusations and criminal charges that were later dropped by an independent prosecuting authority, all for petitioner Charlene Sardonell's renting her house to black persons. Pet. at 2-16. The Petition thoroughly documents this fundamental contention and the courts below erred in dismissing it at summary judgment on the basis that petitioners Douglas and Charlene Sardonell, as whites, cannot sue under § 1982 for discrimination visited upon them because Charlene rented to blacks. Pet. at 16-27.

Although the Brief in Opposition (the "BIO") claims otherwise (BIO at 10-12), even a cursory examination of the district court's opinion shows that the court erroneously rejected petitioners' claims under the federal civil rights statutes, including 42 U.S.C. § 1982, because petitioners, as whites, could not sue for discrimination against them for renting to blacks. *See* Pet. at 17-18. The district court plainly understood that what petitioners "are trying to claim is that defendants retaliated against them for renting to non-whites." Pet. App. 23 (district court's opinion). However, the district court believed that this

legal theory was not allowed by § 1982 or the other civil rights statutes listed below. In regard to § 1982, the court specifically held: "[P]laintiffs' situation would not appear to fit within the scope of a § 1982 claim. In a typical § 1982 claim, a plaintiff must show: (1) that he is a member of a racial minority. . . . " Pet. App. 31. As the Petition shows, moreover, the district court's failure to recognize petitioner's basic legal theory is a reason why the district court rejected petitioners' claims under 42 U.S.C. §§ 1981 and 1985 and the Fair Housing Act as well. *See* Pet. at 17-18 (quoting district court's opinion, Pet. App. 22-23, 30-31, 33-34). It is therefore entirely accurate for the Petition to describe the district court's reasoning in rejecting all of these claims as having been "unified" by a "single theme." Pet. 17.

This pervasive error of the district court was adopted by the Eleventh Circuit. Without any significant analysis of the record or petitioners' claims – including their § 1982 claim – the Eleventh Circuit lauded the district court's opinion as a "carefully drawn order of 37 pages," even though it was fundamentally flawed in this respect. Pet. App. 2. In an attempt to justify the Eleventh Circuit's order, the BIO points (at 13, 20) to the Eleventh Circuit's summary recounting of the district court's order, but the summary itself upholds the district court's misinterpretation of § 1982. Specifically, the Eleventh Circuit summarized the district court's opinion in these words: "The basis of the [district court's opinion] is that there was no connection between the alleged acts and *a violation* of the Fair Housing Act, or 42 U.S.C. §§ 1981, 1982, 1983 and 1985. We affirm." Pet. App. 3 (emphasis added). The district court, however, believed that the civil rights laws above are not *violated* when the purported victim is a white claiming discrimination against herself for her relations with blacks. *See* Pet. at 17-18 (quoting district court's opinion, Pet. App. 22-23, 30-32, 33-34). The Eleventh Circuit's broadbrush approval of the district court's opinion thus indicates that the district court's error was adopted by the Court of Appeals.

The BIO's legal argument against the Petition, moreover, is thoroughly wrong and transparently so. The BIO argues that petitioners' § 1982 claim should be rejected because, in conducting the discriminatory, unfounded investigation of the Sardonells and pressing the meritless criminal charges against Charlene in particular, "[r]espondents took no action that affected the rental house owned by [Charlene] (the 3890 house)," i.e., the house Charlene rented to African Americans triggering the discriminatory punishment by respondents. *See* BIO at 1. Respondents further elaborate their argument as follows: "No action taken by Respondents affected the 3890 house [i.e., Charlene's house], [Charlene's] ownership of the . . . house or her relation with her tenants." BIO at 8. Rather, "[a]ll actions taken by Respondents were in the enforcement of the City's Home Occupation Ordinance at the 3891 house [i.e., Douglas' house]." BIO at 9. The point that this argument makes has no bearing on the merits of petitioners' § 1982 claim.

This Court's cases cited by the BIO (at 12-14, 19) show that the essential fact in a § 1982 claim is that the plaintiff was discriminatorily punished for exercising one of her basic property rights, such as the right to sell or lease, *not* whether the *form* of the punishment was harm to the property itself, the plaintiff's ownership of the property, or the plaintiff's relation with a buyer or tenant.

The BIO concedes (at 14) that "[t]he nexus for standing under 42 U.S.C. § 1982 existed" under the facts in *Barrows v. Jackson*, 346 U.S. 249 (1953), although *Barrows* was brought under the Fourteenth Amendment. As the BIO itself explains, in *Barrows* "a white woman, was subject to an *$11,600 fine* for breaching a restrictive covenant forbidding the sale of realty to non-Caucasians . . . . [She] could thus suffer *financial injury*" for exercising her right to sell to non-Caucasians and, for this reason, she "was granted standing." BIO at 14. Thus, the BIO admits that a simple "pocketbook injury," *Barrows*, 346 U.S. at 256 – a form of punishment that does not affect the

real property, the white plaintiff's ownership of the real property, or the white plaintiff's relation with the buyer – suffices to base a cause of action on § 1982. *See also* Pet. at 23 (discussing hypothetical example of tax on rentals of property to black citizens).

Next, in *Sullivan* the white plaintiff rented his house to a black citizen and assigned to him a membership share in a local recreational corporation. *Sullivan*, 396 U.S. at 234-35. The recreational corporation refused to approve the assignment and instead tendered the white plaintiff cash for his membership shares. *Id.* at 235. The white plaintiff protested and was "expelled from the [recreational] corporation." *Id.* This Court, citing *Barrows*, *supra*, held that expelling the white plaintiff from the recreational corporation gave him a cause of action under 42 U.S.C. § 1982 because this was a discriminatory punishment against the exercise of the property rights to rent and assign:

> We turn to Sullivan's expulsion for the advocacy of Freeman's cause. If *that sanction*, backed by a state court judgment, can be imposed, then Sullivan is *punished for trying to vindicate the rights of minorities protected by § 1982 . . . . Under the terms of our decision in* Barrows, *there can be no question but that Sullivan has standing to maintain this action.*

396 U.S. at 237 (emphasis added).

In *City of Memphis v. Greene*, 451 U.S. 100, 101 (1981), which is misquoted by the BIO at 19,[1] this Court held that a public street could be closed by the City of Memphis consistent with § 1982, where the closing would not "prevent blacks from exercising the same property rights as whites." 451 U.S. at 123. The rights secured by § 1982 always encompass the basic rights "to sell or rent,"

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[1] The quotation attributed by the BIO (at 19) to this Court's opinion in *City of Memphis*, 451 U.S. at 101, is actually drawn from the reporter's Syllabus, not this Court's opinion.

the Court explained, *id.* at 121; however, they do not encompass the right sought by the plaintiffs to use "one public street rather than another . . . for certain trips within the city." *Id.* at 124.[2]

Here, the record amply demonstrates that the governmental respondents discriminatorily punished petitioners for Charlene's exercising her right to rent her house to black persons. Pet. at 1-16. The punishment was far more severe than the $11,600 fine from *Barrows*,

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[2] Misplaced as well is the BIO's reliance (at 16-18) on *Inland Mediation Board v. City of Pomona*, 158 F.Supp. 2d 1120 (2001), and *Graves v. Van Buskirk*, 1991 WL 21545 (Oh. App. 9th Distr. Feb. 20, 1991). In *Inland Mediation*, the plaintiff claimed a violation of § 1982 because she had attended a public meeting where she heard a property owner state to the people present that he did not rent to blacks and he encouraged other property owners present not to rent to blacks. After hearing this, the plaintiff chose to move out of the town. The court reasoned that the plaintiff had not been denied her right to rent housing and further rejected her argument that "hurt feelings and annoyance as a result of racial prejudice in the neighborhood are, by themselves, actionable under § 1982." 158 F.Supp.2d at 1154 (discussing *Bradley v. Carydale Enterprises*, 730 F.Supp. 709, 717 (E.D.Va.1989)).

In *Graves v. Van Buskirk*, 1991 WL 21545 (Oh. App. 9th Distr. Feb. 20, 1991), a black property owner alleged a § 1982 violation based only on a neighbor's children's "vandalism and intimidation often exhibiting elements of racism." *Id.* at *4. The court rejected a § 1982 claim because it found "neither allegations nor evidence of a concerted effort by the Van Buskirk children to deprive blacks of leasehold interests because of race. [The plaintiff] conceded that none of the Van Buskirks had ever demanded that she and her family move from the neighborhood. The record demonstrates a case of senseless hooliganism." *Id.* What was missing in *Graves* is present here. The mother-in-law of City Councilman Gary Noriega – i.e., Ms. Murphy – has twice advocated to Charlene that she not rent to blacks and, when Charlene proceeded with her rental plans against Murphy's desires, Murphy told her neighbor Gordon Powell that she "would just have to see what 'Gary' can do about this." Affidavit of Gordon Powell at ¶ 10; Pet. at 5. And it has been at the instigation and continual prompting of respondent Gary Noriega, City Councilman, that respondents then actively punished the Sardonells for Charlene's renting her house to African Americans. *See* Pet. at 6-12; *see also* pp. 7-9, *infra*.

conceded by the BIO to be sufficient in a § 1982 case, *see* pp. 3-4, *supra*. Charlene was placed in jeopardy of multiple 1-year prison sentences (Pet. at 13-14), and Douglas' heating and air conditioning business was forced to move locations twice in a single year, finally exiting Powder Springs altogether, in order to escape respondents' ongoing harassment and hindering the business' growth (Pet. at 14-15; *see also* Affidavit of D. Sardonell ¶ 21 (sworn to Jan. 8, 2001); Affidavit of J. McTyre at ¶ 7 (sworn to Nov. 20, 2000)).

The BIO remarkably contends (at 2, 8) that the Petition "misrepresents the facts," but then fails to challenge the Petition's factual statements, much less to show that even one of them is misrepresented. It is particularly noteworthy that not a single one of the BIO's factual statements is a quote from the record, nor is any of them followed by a quote from the record supporting or evidencing the statement to be true (*see* BIO at 2-8), whereas the Petition's significant factual statements are all quotes of the record or are followed by quotes from the record showing or evidencing those statements to be true (Pet. at 2-16). The BIO did not show that any of the Petition's factual statements are misrepresentations because there is no basis on which it could have done so given the documentation provided by the Petition.

The factual statements in the Petition, moreover, amply permit a reasonable factfinder to conclude that respondents have punished petitioners because Charlene rented her house to black citizens. (Pet. at 1-16). This is particularly so when as here the case arises upon consideration of a motion for summary judgment against petitioners and they are legally entitled to have every reasonable inference from the record drawn in their favor. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1996).

The BIO (at 2-8) chose to argue against this fundamental contention simply by omitting altogether numerous essential facts. Of course, these are the central facts by which the discriminatory animus of the respondents is

vividly demonstrated. Namely, the BIO omits altogether to mention:

- the fact that the mother-in-law of respondent City Councilman Gary Noriega – i.e., Ms. Murphy – protested to Charlene on two occasions against Charlene's plan to rent her house to black citizens (*see* Pet. at 4-5 (quoting Charlene's Deposition at 47-51)) and, when Charlene refused to abide by Murphy's hateful desires, Murphy stated to her neighbor Gordon Powell that she "would just have to see what 'Gary' can do about this." Affidavit of Gordon Powell ("G. Powell Aff.") at ¶¶ 9-10 (sworn to Dec. 26, 2000), quoted by Pet. at 5.
- the fact that Murphy's son-in-law respondent Gary Noriega, City Councilman, complained against the Sardonells to respondent City Manager Wayne Wright, instigating the City's investigation of the Sardonells, and Gary Noriega fomented the investigation and criminal charges with numerous other complaints, as the Petition documents with admissions from the respondents' own depositions. (*See* Pet. at 7-8, 9-13). Nowhere does the BIO name anyone else but Gary Noriega as having filed a complaint against the Sardonells.
- the fact that, when the BIO states that Gary Noriega received "second and third hand complaints" against the Sardonells, the reference is to the purported "complaint" of Mary Sitherwood, related to Noriega's mother-in-law Ms. Murphy, related to Noriega's wife, related to Noriega. (BIO at 3 (citing Noriega Depo. at 37)). This is the supposed complaint, which is quoted in the Petition at 8, that the Petition showed lacks any credibility, most importantly because *both Mary Sitherwood and Ms. Murphy denied under oath that this "complaint" was ever made – a fact not disputed by the BIO.* (*See* Pet. at 8-9 (quoting Depositions of Ms. Murphy and Mary Sitherwood)).
- the fact that neighbors of the Sardonells aver that they observed no increase in business activity at Douglas' home, although respondents initiated their punishment of petitioners in the form of the unfounded investigation, on the alleged ground of ordinance violations

based on increased business activity at Douglas' home. (*See* G. Powell Aff. ¶ 4 ("In my observation, there was no difference in the business activities at Douglas Sardonell's home . . . between 1995 and 1999.") (sworn to Dec. 26, 2000); Affidavit of Sheila Powell ¶ 6 ("In my observations, there were no changes in the activities of the 3891 . . . home [Douglas' home] from the time that Douglas Sardonell began his heating and air conditioning business in 1995 through April of 1999."); *see also* Affidavit of John Long ¶ 4 ("During the period of 1998 and 1999, I did not observe any change in the activities transpiring at the home of Douglas Sardonell.") (sworn to Jan. 5, 2001)).

- the fact that neighbors of the Sardonells aver that the City's investigation of the Sardonells actually began shortly after Charlene rented her home to black citizens, which she did starting in June 1998 and anew in September of 1998 (Pet. at 5-7) (collecting record quotations and citations). Although the BIO alleges that respondent Noriega complained to respondent City Manager Wayne Wright in the end of 1997 or early 1998 to institute the investigation (BIO at 3), respondent City Manager Wright testified, to the contrary, that Noriega did not complain to start the investigation until "late 1998" (Wright indiv. Depo. at 22), a year later. On this motion for summary judgment against petitioners, however, the controlling evidence as to the date of the start of the investigation is the sworn observations of three of the Sardonell's neighbors, who all averred that the investigation in fact began shortly after Charlene Sardonell rented her home to an African American family, *see supra* this bullet point.
- the fact that respondent City Manager Wayne Wright admitted in his deposition that he has never before or since, except for petitioners, personally asked the Police Chief to issue a citation against anyone. (Pet. at 13 (quoting Wright indiv. Depo. at 112)). Here, the BIO states that Wayne Wright testified in his deposition

that he has asked the police chief to issue citations before (BIO at 6 (citing Wright indiv. Depo. at 109)), yet the BIO omits to acknowledge that Wright explained over the next three pages of his deposition that what he meant was that he had asked others on his staff to contact the police department to request a ticket to issue and he could not recall even once personally asking the Chief to issue a citation against anyone except against petitioners. (Wright indiv. Depo. at 110-12). The pages of Wright's deposition cited by the BIO and this Reply – pp. 109-12 – are set forth in full in the appendix hereto for verification. (Rep. App. 1-5).

- the fact that three criminal charges, not only one as implied by the BIO (at 7), were pressed against Charlene, the latter two being filed months after the initial charge and then months later still being dropped by the independent Cobb County prosecutor's office. As detailed in the Petition, the initial charge (operating Douglas' business without a license) has never been resolved while the later criminal charges (parking business vehicles on the premises of Douglas' home) necessarily were dropped, for the reason that Charlene did not own the property on which vehicles allegedly were parked, i.e., Douglas' home. *See* Entry of Nolle Prosequi, Aug. 14, 2000, State Court of Cobb County, Cobb Judicial Circuit (Glover, J.) ("Defendant is not the property owner."). None of the charges should ever have been filed against Charlene in all events, as she owns neither Douglas' home nor any of his business, as conceded by the BIO at 7, 9. But – it is of course Charlene who chose to rent her house to African Americans.

The BIO lacks any merit when it contends that "Petitioners have proven no nexus between Respondents' enforcement of the Home Occupation Ordinance at the 3891 house [Douglas' house] and the renting of the 3890 house [Charlene's house]." BIO at 8. The nexus is clear. Respondents directed the criminal charges specifically at Charlene, the owner of the 3890 house, and all of their punishment tactics were triggered by Charlene's renting of

the 3890 house to blacks, as detailed above and fully in the Petition (at 1-16).

CONCLUSION

For the reasons stated above and in the Petition, this Court should grant the writ of certiorari, summarily reverse the Eleventh Circuit's judgment as to petitioners' § 1982 claim (and so much of their 42 U.S.C. § 1983 claim as is based on their § 1982 claim), and remand the case for further proceedings.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA CHARLENE SARDONELL and DOUGLAS SARDONELL,	)	
Plaintiffs	)	CIVIL ACTION FILE
vs.	)	NO. 1:99-CV-1921-JEC
GARY NORIEGA, Individually and as a Council Member, City of Powder Springs, WAYNE WRIGHT, Individually, and as City Manager, City of Powder Springs, RICHARD SAILORS, Individually, and as Mayor, City of Powder Springs, VINCE BLACKMON, Individually, and as Code Compliance Officer, and the CITY OF POWDER SPRINGS,	)	
Defendants.	)	

* * *

The deposition of WAYNE WRIGHT, Individually, Deponent, taken on behalf of the Plaintiffs for purposes of examination and any other purposes authorized by the Federal Rules of Civil Procedure and Federal Rules of Evidence; all formalities are waived; the reading and signing of the deposition being reserved; taken before Anne C. Noble, CCR, commencing at 2:07 p.m. on March 7, 2000, at the Law Offices of Jacqueline K. Taylor, 1950

Spectrum Circle, 400 Corporate Spectrum Building, Atlanta, Georgia 30067.

* * *

[109]

Q. Did you request that Lieutenant Freeland issue the citation to the Sardonells?

A. No.

Q. Do you know who did?

A. I asked the chief of police to issue a citation.

Q. Okay.

A. To cause a citation to be issued.

Q. Who is the chief of police?

A. Rick Richardson.

Q. He was the chief at the time the citation was issued?

A. Yes.

Q. Did you send him something in writing?

A. No.

Q. You talked to him on the phone?

A. Yes.

Q. What did you tell him?

A. That the Sardonells are still in violation of the business license ordinance, although they said they would

move their business, and they needed to be cited, and that I wanted to have someone cite them.

Q. Have you ever done that before?

A. Yes.

Q. Request that the chief issue a citation?

[110]

A. Yes.

Q. In the course of a typical year, how many times do you do that, request that the chief of police issue a citation to a citizen; a typical year?

A. A couple times a year, maybe.

Q. How many times in 1999 do you think you did that; that is, that you requested that the chief of police issue or cause a citation to be issued to a citizen?

A. Well, I don't know how many times I actually contacted the chief.

Q. I'm not asking about contacting the chief. I'm asking about requesting that he have a citation issued.

A. I understand. But what I was trying to – I was trying to answer the – often I don't contact the chief. The way we handled code enforcement before Mr. Miller was hired, Mr. Blackmon would pursue enforcement until he got to the point, where if he could not obtain compliance, he would turn it over to the police department for a citation to be issued, and, from time to time, I have become involved in saying "Enough is enough," and "Let's issue a citation."

The directions may have come from me to Mr. Blackmon to the police department, or it may have

[111]

come from me to Mr. Elliott, who is Mr. Blackmon's supervisor, or it may have come from me, directly to the chief of police and then to an officer.

Q. All right.

A. So what I'm saying is: I may not have, every time a citation has been issued at my direction, gone through the chief of police.

Q. All right. Let's talk about your memory about when you did talk to the chief of police, you, yourself, directly, and requested that a citation be issued. I'm asking you: How many times do you recall that happened in 1999?

A. I think that's probably the only time.

Q. During the course of a typical year, how many times would you, yourself, normally contact the chief of police and request that a citation be issued to a citizen?

A. I can't recall that I've ever contacted the chief, other than that, to ask for a citation to be issued. I may have.

Q. You have no recollection today of having ever directly called the chief of police to ask that he have a citation issued to a citizen for a violation of a city ordinance; am I correct?

A. I may have, may not. I don't recall.

[112]

Q. I'm just asking you to answer the question.

Do you have any recollection that you have ever requested that the chief of police have a citation issued to a citizen for a violation of an ordinance?

A. I recall directing that citations be issued. Whether I called the chief, I don't remember.

Q. Sir –

MS. TAYLOR: I'm going to object. I'm going to, for the record, enter an objection that the witness is being nonresponsive.

BY MS. TAYLOR:

Q. The question is: Can you tell me that you have ever, other than with the Sardonells, requested directly – you, yourself – that the chief of police have a citation issued to a citizen for a violation of a city ordinance?

A. And I think I've clearly answered that question.

Q. Answer the question "yes" or "no," please, sir.

A. No.

Q. To your knowledge, has any code enforcement officer issued a citation to a citizen before for violations of a city ordinance? Has that

* * *